

1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF TENNESSEE
3 NASHVILLE DIVISION

4 EDWARD JAMES BEYER)
5 VS) No. 3:16-2736
6 VESTAGEN PROTECTIVE)
7 TECHNOLOGIES, INC.)

8 BEFORE THE HONORABLE ALETA A. TRAUGER, DISTRICT JUDGE

9 TRANSCRIPT OF PROCEEDINGS

10 November 28, 2017

11
12 **APPEARANCES :**

13 For the Plaintiff: MATTHEW R. ZENNER
14 McCune Zenner Happell
15 5200 Maryland Way
Suite 120
Brentwood, TN 37027

16 For the Defendant: WILLIAM S. RUTCHOW
17 Ogletree, Deakins, Nash &
Smoak
18 401 Commerce Street
Suite 1200
19 Nashville, TN 37219

20
21
22 **Roxann Harkins, RPR, CRR**
23 Official Court Reporter
24 801 Broadway, Suite A837
Nashville, TN 37203
615.403.8314
25 roxann_harkins@tnmd.uscourts.gov

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1
2 The above-styled cause came to be heard
3 on November 28, 2017, before the Hon. Aleta A.
4 Trauger, District Judge, when the following
5 proceedings were had at 9:28 a.m. to-wit:
6

7 THE COURT: Good morning. We're here for
8 a bench trial in *Edward James Beyer versus Vestagen*
9 *Protective Technologies, Inc.* We have Matthew
10 Zenner --

11 MR. ZENNER: Yes, Your Honor.

12 THE COURT: -- for the plaintiff. And
13 this is the plaintiff. And he goes by Jim Beyer; is
14 that right? It's not Bayer (phonetic), it's Beyer.

15 MR. BEYER: Beyer.

16 THE COURT: And we have William Rutchow
17 for the defendant.

18 MR. RUTCHOW: Yes, Your Honor.

19 THE COURT: And your company
20 representative is CEO William Bold.

21 MR. BOLD: Correct, Your Honor.

22 THE COURT: Very good. All right. I
23 don't think we need any opening statements. If you
24 feel strongly you want to make one, I'll listen, but I
25 think --

1 MR. ZENNER: I don't, Your Honor.

2 THE COURT: Okay, good.

3 MR. RUTCHOW: After that, Your Honor, no.

4 THE COURT: All right. Well, why don't
5 we just get right into the testimony, then.

6 Mr. Zenner, you want to call your first witness?

7 MR. ZENNER: Thank you, Your Honor.

8 MR. RUTCHOW: Your Honor, I don't see him
9 in the courtroom, but plaintiffs did have listed
10 another witness who's a nonparty, and we would invoke
11 the rule to sequester that witness if he's showing up.

12 MR. ZENNER: Yes, he'll be here about
13 11 o'clock.

14 THE COURT: Okay. Is that Tony Pruna?

15 MR. ZENNER: Yes.

16 THE COURT: Okay. You're going to start
17 with the plaintiff?

18 MR. ZENNER: Yes, Your Honor.

19 THE COURT: Very good.

20 MR. ZENNER: Call Jim Beyer to the stand.

21 **JIM BEYER**

22 called as a witness, after having been first duly
23 sworn, testified as follows:

24 MR. ZENNER: Your Honor, if I may
25 approach, I have a copy of some of the exhibits that

1 I'll be referencing, one for the witness and one for
2 the Court.

3 THE COURT: Okay.

4 MR. RUTCHOW: Just for clarification,
5 this is shrunk down --

6 MR. ZENNER: It is a shrunk-down list.

7 MR. RUTCHOW: Just want to make sure.

8 THE COURT: Is there agreement on all
9 these exhibits? You want to just move them in right
10 now or do you want to do it one at a time?

11 MR. ZENNER: I think we'll do it one at a
12 time.

13 THE COURT: That's fine.

14 MR. ZENNER: And then if we have a
15 disagreement, we can speak about them.

16 THE COURT: To the extent you have extra
17 copies -- do you?

18 MR. ZENNER: I've got a copy for counsel,
19 for the witness and for the judge.

20 THE COURT: Okay. I was going to have
21 you give my law clerk an extra copy if you had an
22 extra copy.

23 MR. ZENNER: I apologize, Your Honor. We
24 can certainly make a copy.

25 THE COURT: If you don't have an extra

1 copy, that's all right.

2 MR. ZENNER: I can have my assistant
3 email them, if you want.

4 THE COURT: Are the originals with the
5 witness? Where's the original?

6 MR. ZENNER: With the witness.

7 THE COURT: With the witness, okay.

8 MR. ZENNER: To the extent there are any
9 originals. They're all copies of documents.

10 THE COURT: Okay.

11 **DIRECT EXAMINATION**

12 BY MR. ZENNER:

13 Q. Mr. Beyer, why don't you just introduce
14 yourself to the Court, please.

15 A. My name is Jim Beyer.

16 Q. Mr. Beyer, where do you live right now?

17 A. Franklin, Tennessee.

18 Q. How long have you lived there?

19 A. Two and a half years.

20 Q. Tell the Court a little bit about your
21 educational background.

22 A. I have a business degree from Linfield
23 College. And a Navy veteran as well.

24 Q. Okay. Now, if you will turn to what has
25 been previously marked as Plaintiff's Exhibit 1 -- do

1 you need your glasses?

2 A. I do. Would you mind? I didn't think
3 I'd be needing them.

4 MR. ZENNER: Your Honor, may I approach?

5 THE COURT: Yeah, that'd be fine.

6 THE WITNESS: Thank you.

7 BY MR. ZENNER:

8 Q. Do you recognize Exhibit 1?

9 A. Yes, that's my résumé.

10 MR. ZENNER: Okay. Why don't we go ahead
11 and move exhibit -- plaintiff's résumé in as
12 Plaintiff's Exhibit 1.

13 THE COURT: Any objection?

14 MR. RUTCHOW: No objection, Your Honor.

15 THE COURT: Received.

16 So, now, your exhibit list that you have
17 filed with the Court -- do you have an exhibit list?

18 MR. ZENNER: On the front of the book
19 there is an exhibit list. Like Mr. Rutchow pointed
20 out, it is pared down from the one we filed.

21 THE COURT: Do you have an extra copy of
22 that for the courtroom deputy?

23 MR. ZENNER: I can get one. Again,
24 there's one in each book.

25 THE COURT: Here, let me just give you

1 mine, Katheryn. If you can run a copy of it because I
2 think you'll probably need it.

3 COURTROOM DEPUTY: Yes.

4 THE COURT: Okay. Yeah, just go do it
5 right now, that's fine.

6 Any objection to Exhibit 1?

7 MR. RUTCHOW: No, Your Honor.

8 THE COURT: All right. Received.

9 (Plaintiff Exhibit No. 1 was admitted.)

10 MR. ZENNER: Should I wait?

11 THE COURT: No, that's fine.

12 BY MR. ZENNER:

13 Q. Now, Mr. Beyer, tell me a little bit
14 about your background in the medical device industry.
15 Tell me what your work history is.

16 A. So I began my career in hospitals after
17 the military and college. I started off in hospitals,
18 worked my way up. And then I worked for the GPOs,
19 group purchasing organizations, for a number of years
20 as a director.

21 I left there, became VP of marketing for
22 a medical device company in Colorado. From that point
23 I left and started with Masimo -- we were a small
24 \$25 million medical device company -- as an executive
25 there. I spent 11 years and we grew that organically

1 to over \$700 million in sales.

2 Q. Okay. You said you worked for Masimo, it
3 looks like from your résumé, from 2004 until you took
4 the position with Vestagen; is that right?

5 A. That is correct, yes.

6 Q. Now, when you were at Masimo, what were
7 your job responsibilities?

8 A. I had numerous. I was really more a
9 business development role. So I started our corporate
10 accounts program, I led the sales team. And then I
11 backfilled, hired a leader for the sales team, and I
12 went to develop alternate care markets, our EMS
13 markets, inside sales. What else. I know I'm missing
14 something.

15 Q. How many people did you have direct
16 management control over?

17 A. So by 2014 I had about 125 people on my
18 team. I had 13 direct reports.

19 Q. How much were you being paid when you
20 were at Masimo in 2014 and '15?

21 A. About 400,000 a year.

22 Q. Now, at some point you began to be
23 recruited by the defendant in this action, Vestagen;
24 is that right?

25 A. That is correct.

1 Q. Tell me how that process came about.
2 What happened?

3 A. A gentleman by the name of Tom Callaway
4 reached out to me and asked me if I'd be interested.
5 I reviewed the technology. And, frankly, in my
6 25-year-plus industry, I was fascinated with the
7 technology, the opportunity with this technology.

8 Q. Let me stop you. I want to ask one
9 question going back. Have you ever been fired from a
10 job before?

11 A. Never.

12 Q. Okay. Sorry, go ahead. Go into the
13 recruitment process.

14 A. So I did -- I did my due diligence on the
15 technology. And I believed in its efficacy in the
16 healthcare market.

17 Q. Explain the technology briefly.

18 A. It's scrub, basically, the clinicians
19 wear, but it's fluid repellent and antimicrobial.

20 Q. And what does Vestagen do exactly?

21 A. That's what they did. They had the
22 fabric --

23 Q. Manufacturing?

24 A. -- that was antimicrobial and fluid
25 repellent. I knew there was a number of them out in

1 the market, but they had a business model that I was
2 interested in.

3 Q. Okay. And did you have conversations
4 with people? Who did you interview with?

5 A. I entered with -- or interviewed with
6 Dale Pfof.

7 Q. Who is Dale Pfof?

8 A. He was on the board of directors. He was
9 the acting CEO at the time. Randy Scott.

10 Q. Who is Randy Scott?

11 A. He's another board member. Ben Favret,
12 who was the founder of the company. Marc Lessem, who
13 was the marketing lead. Tony Pruna, who was the CFO.
14 I think that was the extent.

15 Q. Okay. What time period did this
16 interview process take place? I'll give you a point
17 of reference. You began your employment on January 4
18 of 2016.

19 A. Correct. I think the interviews started
20 about September, maybe prior to, maybe August,
21 September time frame.

22 Q. Okay. And ultimately I take it you were
23 made an offer; is that right?

24 A. Correct.

25 Q. If you will turn to what's been marked as

1 Plaintiff's Exhibit 2. That is a letter dated
2 November 23, 2015, addressed to you from Dale Pfoost.
3 You recognize that document, I take it?

4 A. Yes, I do.

5 Q. Is that the offer that Vestagen made you
6 for employment?

7 A. It appears so, yes.

8 Q. And did you accept that offer?

9 A. I did.

10 Q. Okay. And if you turn back to I guess
11 the second-to-the-last page there is a poorly copied
12 signature page, but is that your signature on it?

13 A. Yes, it is.

14 Q. And did you sign that essentially the day
15 it was sent to you?

16 A. I -- there was many variations of this,
17 but yes, I believe that was -- I signed it that day.

18 MR. ZENNER: Okay. Why don't we move
19 Exhibit 2 in.

20 THE COURT: Any objection?

21 MR. RUTCHOW: No, Your Honor.

22 THE COURT: My copy, the one that was
23 attached to the complaint has Mr. Beyer's signature --
24 oh, wait a minute. Okay. I see it. All right, never
25 mind.

1 MR. RUTCHOW: Your Honor --

2 THE COURT: It's just a bad copy.

3 MR. RUTCHOW: Once he testified that was
4 his signature, that's about as good as we're going to
5 get --

6 THE COURT: That's fine.

7 MR. RUTCHOW: -- because I think my copy
8 has a poor signature.

9 THE COURT: That's fine. Any objection
10 to Exhibit 2?

11 MR. RUTCHOW: No, Your Honor.

12 THE COURT: Received.

13 (Plaintiff Exhibit No. 2 was admitted.)

14 BY MR. ZENNER:

15 Q. Looking at Exhibit 2, who drafted this
16 agreement?

17 A. I would assume Dale Pfof drafted it.

18 Q. Did you draft it?

19 A. I did not.

20 Q. Okay. So in any event it was someone, as
21 far as you were concerned, from Vestagen or a
22 representative of theirs?

23 A. Correct.

24 Q. Okay. Let's just go through some of
25 these terms quickly. On the second page, what was the

1 position that you were being hired?

2 A. Senior vice-president of sales.

3 Q. And it says in paragraph 2 that you were
4 to report to work no later than Monday, January 4 of
5 2015. That's probably a typo?

6 A. Yes, it is a typo.

7 Q. Probably means 2016.

8 A. Correct.

9 Q. Okay. And what was your compensation?

10 A. 225,000 base, plus a 40 percent
11 commission. Or bonus, rather.

12 Q. Okay. Were there any type of stock
13 options?

14 A. Yes, there was stock options.

15 Q. Okay.

16 A. Yes, which was really the driving
17 catalyst.

18 Q. When were those stock options to vest?

19 A. I don't recall. Certainly when there's
20 an exit or an event. If we sold the company, they
21 would vest. I don't recall the term.

22 Q. I'm looking at the last paragraph on the
23 first page of this long-term compensation. Says
24 25 percent to be option shares will vest on the first
25 anniversary of the commencement of your employment.

1 That was your understanding?

2 A. That is correct. That is correct. It
3 was a little bit more complicated than the normal
4 vesting period, but it was -- that's what it was.

5 Q. And we never made it to one year, did we?

6 A. No, sir.

7 Q. Now, was there a severance provision?

8 A. There was.

9 Q. How was it that the severance provision
10 was included and negotiated into your agreement?

11 A. It wasn't the original offer letter, and
12 I was waffling a bit just because I was tempted to
13 leave the company I'd been with for a long time.
14 That's when Bill Bold entered the picture.

15 Q. Tell the Court who Bill Bold is.

16 A. Bill Bold at the time was the candidate
17 for the CEO position.

18 Q. Okay. And what -- what was his
19 involvement?

20 A. He was -- in my opinion, well, pushing to
21 recruit me. I was not waffling --

22 MR. RUTCHOW: Your Honor, I'm going to
23 object as to offering of opinions of Mr. Bold's
24 motivations.

25 THE COURT: Well, he can certainly say

1 anything Mr. Bold said or that you heard Mr. Bold say
2 that might indicate what you have concluded.

3 THE WITNESS: He was very complimentary
4 of my contacts, skills, experience in this market.
5 And he was convinced, the way he phrased it to me,
6 that together we can really make this a market. And
7 he came back with this language -- his position was,
8 you know, my opinion, was trying to sweeten the pot
9 effectively, because there was some risk with this
10 company at that point.

11 BY MR. ZENNER:

12 Q. How old was this company at that point?

13 A. It had been in operation since 2009, but
14 they haven't -- they really didn't sell anything or
15 not much. And they've gone through a lot of investor
16 money. So there was a risk with this company.

17 Q. Would you describe it as a startup?

18 A. Well, they'd been operating since 2009,
19 so a startup is not what I would clarify, but they
20 were risky.

21 Q. Okay. Why would you take this position?

22 A. I believed in the technology, frankly.
23 And I -- 25 years in this market, healthcare scrubs is
24 sort of the last piece of the puzzle for healthcare
25 workers for their safety, as well as the protection of

1 their patients. That's how I felt.

2 Q. Now, let's just look at the severance
3 language on page 2 of the agreement. Will you read
4 that, please.

5 A. In the event you are subject to an
6 involuntary termination, you will be eligible for
7 severance pay, including a lump sum in cash equal to
8 six months of your base salary and three months
9 continued payment of your medical premium.

10 Q. There is language referencing an
11 involuntary termination. If you look down the page,
12 is there a definition for involuntary termination?

13 A. There is.

14 Q. Will you read that, please.

15 A. Involuntary termination means either, A,
16 your termination without cause or, B, your resignation
17 for good reason.

18 Q. And then, of course, in the definition
19 section, cause is defined. You see that?

20 A. I do.

21 Q. Could you read over those provisions?

22 THE COURT: We don't --

23 MR. ZENNER: We don't need to read it,
24 okay.

25

1 BY MR. ZENNER:

2 Q. At the time, though, you read over these
3 provisions; right?

4 A. Yes, I did.

5 Q. All right. Now, this was signed late
6 November. When did you -- and you actually started in
7 early January. What did you do in the meantime with
8 respect to Vestagen, if anything?

9 A. A number of things. So my official start
10 date was January 4, but I attended, at their request,
11 a sales meeting in early December for a couple of
12 days. And then at Bill Bold's request I got
13 immediately engaged in some customers in December,
14 particularly an HCA hospital division in Tampa. He
15 didn't have faith in the current folks that were there
16 and asked me to fly out there and meet with that
17 customer.

18 Q. Okay. When was your last day at Masimo?

19 A. Officially, December 30.

20 Q. So, for example, while you were attending
21 this two-day sales meeting, which was in early
22 December; is that right?

23 A. Correct.

24 Q. Were you still employed with Masimo?

25 A. Yes, I was.

1 Q. Inside the employment agreement,
2 Exhibit 2, there's reference to an employee handbook.
3 I want you to look at what's been marked as
4 Plaintiff's Exhibit 3. Is that a copy of Vestagen's
5 employee handbook?

6 A. I assume so, yes.

7 Q. And towards the back of this, there is
8 Vestagen 103. There is a page, I guess, where you
9 signed and acknowledged receipt of it?

10 A. I'm sorry, I don't see the signature.

11 THE COURT: The very last page.

12 BY MR. ZENNER:

13 Q. The very last page, Bates stamp 103 on
14 the bottom.

15 A. Yes. February 8?

16 Q. Yes.

17 A. Yes.

18 Q. How is it that you ended up signing this
19 February 8? Just explain what happened.

20 A. It was part of the original offer -- not
21 the document itself, but reference to the noncompete
22 document, but it was not sent to me. And so I was
23 actually in a meeting in Orlando at the headquarters
24 when Tony Pruna brought this in to have me sign it.

25 Q. And Tony Pruna is who?

1 A. He was chief marketing officer in HR --
2 or, excuse me, chief financial officer, Human
3 Resources.

4 Q. When you began your employment in
5 January 2016, what was your compensation structure?
6 How often -- compensation structure. How often were
7 you being paid?

8 A. It was once a month.

9 Q. Okay. And do you recall what that was?
10 Do you recall the amount?

11 A. I don't recall.

12 Q. Okay. Whatever your annual salary is
13 divided by 12, I guess?

14 A. Divided by 12.

15 Q. At some point that changed; is that
16 right?

17 A. It did.

18 Q. It just went from being paid every month
19 to being paid twice a month?

20 A. That's correct.

21 Q. But the figure, the total compensation
22 package stayed the same?

23 A. Correct.

24 Q. Okay. As the senior vice-president of
25 sales of Vestagen, what were your job

1 responsibilities?

2 A. To grow the company commercially.

3 Q. How?

4 A. Build a sales team, train the sales team,
5 get into hospitals and educate clinical leaders on the
6 efficacy of this technology.

7 Q. How many salespeople did you have when
8 they started -- when you started?

9 A. Well, one -- four direct reports.

10 Q. And who was your direct report? Who did
11 you report to?

12 A. Bill Bolds.

13 Q. Were you provided at the time revenue and
14 performance goals that you were to meet?

15 A. We had a revenue goal of 2.2 million for
16 that year.

17 Q. Okay. Before you started, so this would
18 be January of 2015 --

19 A. '16.

20 THE COURT: '16; right? January of 2016.

21 MR. ZENNER: Correct. I was thinking
22 December of 2015, and I got my numbers mixed up.

23 BY MR. ZENNER:

24 Q. So December 2015, what's your knowledge
25 of Vestagen's sales, annual sales at the time you

1 started?

2 A. They were small. I think the company did
3 about 700,000 in sales, but I was not aware at that
4 point of what their sales were.

5 Q. So \$700,000 in sales in 2015?

6 A. Correct.

7 Q. Okay. How were you spending time as the
8 senior sales rep? Were you managing other sales
9 representatives?

10 A. I was.

11 Q. What were you doing?

12 A. There was four at the time. And my
13 immediately -- my immediate goal was to right-size the
14 organization, put everybody in the right regional
15 territories, train them and start bringing on
16 additional sales folks. That was the plan. The plan
17 was to build a sales team of about 18 individuals.

18 Q. What about the sales process that was in
19 place at Vestagen?

20 A. They had an overengineered, what they
21 called a sales road map. They had hired consultants
22 last year, I think they spent nearly a million dollars
23 from people that were outside the medical device
24 industry, and it was an very overengineered sales
25 process. And so Bill Bold and I both agreed that we

1 were going to revise that quickly to make it easier
2 for a sales rep to be successful.

3 Q. Were you responsible for traveling around
4 and meeting with customers?

5 A. Yes, that was -- yes.

6 Q. Okay. And tell me what a sales funnel
7 is.

8 A. A sales funnel is a tool for a sales
9 leader to track and manage the progress of the sales
10 process for your reps.

11 Q. Was there a sales funnel in place at the
12 time you started in 2016?

13 A. There was.

14 Q. So if you'd turn to what's been marked as
15 Plaintiff's Exhibit 4. Do you recognize that
16 document?

17 A. Yes, I do.

18 Q. What is it?

19 A. This is the funnel that was in existence
20 when I started.

21 Q. Well, explain what some of this means.

22 A. So the way that their sales road map is
23 what they called it was to take a customer from the
24 onramp on the left side to basically closing the
25 business. And you go along various steps in the sales

1 process. And so as an example -- and I don't even
2 remember what the 1A, 1B, 1C is, but it was
3 overcomplicated. There was a way to determine taking
4 East Alabama Medical Center from initial sales calls
5 to the point where you're doing clinical evaluations,
6 negotiating the contracts, et cetera.

7 THE COURT: I'm very confused. You're
8 looking at Exhibit 5?

9 MR. ZENNER: 4.

10 THE COURT: I'm sorry. No wonder I'm
11 confused. Exhibit 4.

12 MR. RUTCHOW: It's just one page,
13 Your Honor.

14 MR. ZENNER: It's just one page.

15 THE COURT: Oh, it's one page, I'm sorry.
16 Okay, got it.

17 BY MR. ZENNER:

18 Q. So these names that I see in these
19 columns and rows, are those potential customers?

20 A. They were. And that was what was given
21 to me as potential customers, but very quickly
22 afterwards, I would say three-quarters of these
23 customers disappeared. They were not legitimate.

24 Q. How so?

25 A. So, as an example, in Metroplex or

1 Children's Dallas, Spectrum Health, these were not
2 that far along the process. As an example, Spectrum
3 Health appears to be close to closing. They hadn't
4 spoken to the customer in over nine months, but yet it
5 was indicated that it was close to closing.

6 Q. Okay. How many actual customers did
7 Vestagen have at the time you started?

8 A. One.

9 Q. Who?

10 A. Baptist Jacksonville.

11 Q. How would you describe this sales funnel?
12 Based upon your experience --

13 A. Very elementary.

14 Q. -- is it robust?

15 A. No, not at all.

16 Q. Is this -- would you consider this to be
17 a large sales funnel, a small sales funnel?

18 A. No, very, very small. It was even more
19 concerning because once I did the due diligence on
20 these, three-quarters of these were not viable
21 opportunities.

22 Q. So you started in January, just tell me,
23 how did you spend the first four or five months of
24 your position as vice-president of sales? What kinds
25 of things were you doing?

1 A. I was on the road constantly, meeting
2 with customers, leveraging my relationships and
3 contacts in the industry, working with -- we had one
4 consultant at that point that was helping us get
5 audiences at the SEE Suite. I built the training
6 program, the sales funnel, the call point strategy and
7 I began the recruiting process, just in the first
8 month, I would say.

9 Q. Was it working?

10 A. It was.

11 Q. Well, let's look at Plaintiff's Exhibit
12 No. 5.

13 THE COURT: Did you move in 3 and 4?

14 MR. ZENNER: I'm sorry.

15 THE COURT: Did you intend to move in 3
16 and 4?

17 MR. ZENNER: Yes, I did.

18 THE COURT: Any objection to 3 and 4?

19 MR. RUTCHOW: No, Your Honor.

20 THE COURT: Received.

21 MR. ZENNER: Thank you, Your Honor.

22 (Plaintiff Exhibits Nos. 3 and 4 were
23 admitted.)

24 BY MR. ZENNER:

25 Q. What is what's been marked as Plaintiff's

1 No. 5?

2 A. I'm sorry, is that a question?

3 Q. Yes. Tell me what it is.

4 A. This was an email from the CFO on or
5 about May 9. It was a sales report.

6 Q. And what is contained in this report?

7 A. Just customer sales.

8 Q. And is that report attached to the email?

9 A. Yes.

10 Q. And if you look at the last page, what
11 does that show as the total sales through the first
12 four months, I guess, of the year?

13 A. 390,000.

14 Q. Okay. And all of these different items
15 that are recorded on this sales report, are those the
16 different customers and what they bought?

17 A. Yes.

18 Q. And then each salesperson is identified
19 as well?

20 A. Correct.

21 THE COURT: You said that there was one
22 customer when you started in January?

23 THE WITNESS: One large customer. So
24 there were -- people were buying onesy, twosies, but
25 from what we were focusing on which is the

1 institutional sales, we only had one customer.

2 THE COURT: But these are a bunch more
3 customers.

4 THE WITNESS: It's just -- some of those
5 are results of our efforts initially the first several
6 months, I'd say the majority of those. But there were
7 also onesy, twosies, people that bought online, things
8 of that nature. That wasn't our focus. Our focus was
9 institutional purchases.

10 MR. ZENNER: Okay. Move that in as the
11 next exhibit.

12 THE COURT: Any objection to 5?

13 MR. RUTCHOW: No, Your Honor.

14 THE COURT: Received.

15 (Plaintiff Exhibit No. 5 was admitted.)

16 BY MR. ZENNER:

17 Q. If you will turn to
18 Plaintiff's Exhibit 6, looks like a text message
19 exchange. Who is that text message exchange with?

20 A. With Bill Bold.

21 Q. The one that's dated April 28 that starts
22 with Shh, is that you writing?

23 A. Yes, that's me writing.

24 Q. And what are you -- what are you telling
25 Mr. Bold?

1 A. I wanted to keep it under wraps a little
2 bit until I further explored that opportunity, but I
3 wanted to let him know that the CNO of that division
4 was moving forward with us.

5 Q. And that's his response to you --

6 A. Yes.

7 Q. -- on the bottom?

8 A. Yes.

9 Q. Through this time period, end of April,
10 had you had any complaints about your performance?

11 A. No.

12 Q. None at all?

13 A. No.

14 Q. Had you had any issues with any employees
15 through that point?

16 A. Well, certainly. It was -- in the
17 context, when I showed up, the company was virtually
18 bankrupt. And even the board had indicated to me that
19 they've got about a year's left of funding. You know,
20 go make this successful, you've got a year.

21 Q. When you say funding, were they being
22 funded by an equity group?

23 A. They had gone through about \$36 million
24 in funding. So this was the last hope for them.

25 Q. So did you have any issues with

1 employees?

2 A. There were certainly -- issues, yes,
3 absolutely. I mean, I had -- I inherited an elderly
4 gentleman who had never been a salesperson. So trying
5 to get him to cooperate on some of the basic sales
6 process, file management, call point strategy was
7 difficult.

8 Another gentleman, Brian Crawford, who
9 had been there from the beginning, his title was chief
10 business development officer, he felt that reporting
11 to me was a bit beneath him. So it was trying to herd
12 cats a little bit.

13 Q. Did you have any conversations with Bill
14 Bolds about these personality conflicts?

15 A. Yes, absolutely.

16 Q. Tell me about those conversations.

17 A. Bill was in agreement that we needed to
18 let Gene go and Brian Crawford initially.

19 THE COURT: Gene is the elder man you
20 were --

21 THE WITNESS: Yes, ma'am.

22 THE COURT: -- talking about? Gene what?

23 THE WITNESS: Gene Deutscher.

24 BY MR. ZENNER:

25 Q. Did that ever happen?

1 A. No. He -- no.

2 Q. Did you have authority to fire him?

3 A. I did. That was my initial
4 understanding, that I would manage everything
5 commercial within the organization, but unfortunately
6 that wasn't the case.

7 Q. As a result of these personality
8 conflicts with Mr. Deutscher and Mr. Crawford, did
9 Mr. Bolds ever indicate to you that your job was at
10 stake?

11 A. Never.

12 Q. Did you ever have a meeting along those
13 lines?

14 A. Not one.

15 Q. Did he ever mention to you that these
16 personality conflicts were cause for termination?

17 A. No.

18 Q. Did he ever tell you that you had ten
19 business days to cure?

20 A. No.

21 MR. ZENNER: If I can move in
22 Plaintiff's Exhibit 6.

23 THE COURT: Any objection?

24 MR. RUTCHOW: No, Your Honor.

25 THE COURT: Received.

1 (Plaintiff Exhibit No. 6 was admitted.)

2 BY MR. ZENNER:

3 Q. Moving to -- I guess we're now in May
4 going into June there's an email marked as
5 Plaintiff's Exhibit 7. It's from Bill Bold to it
6 looks like -- is that the sales team?

7 A. Correct.

8 Q. Well, just tell me -- you don't have to
9 read it, but tell me what's going on in this email
10 exchange.

11 A. We had secured a meeting at Children's
12 Hospital in Dallas, and we showed up at the meeting,
13 we expected one person, and there was a group of
14 clinicians in the meeting. And we articulated the
15 value proposition, the solution in these scrubs,
16 et cetera. And they were very excited about the
17 technology once we left.

18 Q. And it looks like you sent an email to
19 everyone giving an update on those meetings; is that
20 right?

21 A. I did. It was a good week, and so I gave
22 everybody just an update on my activities with my
23 team. And these are all very notable health systems.

24 Q. And then there's an email from Chelle
25 Barker. And you don't need to read it, but it looks

1 like she was complimentary of you?

2 A. Correct.

3 Q. And then the final email is from
4 Mr. Bolds, saying great message, thanks, Chelle and
5 Jim.

6 A. Correct.

7 Q. During this time period, did you have any
8 complaints about your job performance from Mr. Bolds
9 or anyone else?

10 A. No.

11 MR. ZENNER: I'll going to mark it --
12 move in Plaintiff's Exhibit 7.

13 THE COURT: Any objection?

14 MR. RUTCHOW: No, Your Honor.

15 THE COURT: Received.

16 (Plaintiff Exhibit No. 7 was admitted.)

17 BY MR. ZENNER:

18 Q. Now, moving into the end of July, how are
19 things going in July? Things moving forward?

20 A. They are, yes.

21 Q. How was the sales process taking hold?

22 A. It was taking hold very well. It was
23 longer than anybody had hoped for in terms of the
24 sales process.

25 Q. What do you mean by that?

1 A. Well, from the time you meet a customer
2 to the time they close the business, every product
3 solution technology takes a little bit -- takes
4 different times. If it's highly technical, it could
5 be an 18-month sales process. If it's commodity
6 product, it may take three to six months. At this
7 point we figured that the sales process was about a
8 year. Some earlier successes, but typically about a
9 year.

10 Q. That's from start to finish?

11 A. Yes. Correct.

12 Q. So if you stepped in and some of these
13 introductions had already been made and they were
14 already in the funnel, that time period may or may not
15 be shorter?

16 A. I shortened it, certainly.

17 Q. Can you give examples?

18 A. HCA. Northwell is a good example.
19 Northwell is a -- Brain Crawford had been calling on
20 that hospital for some time. I don't know how long,
21 but certainly greater than a year. And the best way
22 to describe it is it was -- his process was very
23 ineffective. He was getting to the wrong folks.

24 And I got immediately engaged in
25 Northwell, traveled there, wrote all the

1 communications to the key leaders there and percolated
2 the sales process.

3 Q. What was the result of that?

4 A. Northwell ended up moving towards
5 Vestagen.

6 Q. If you will look at what's been marked as
7 Plaintiff's Exhibit 8. Tell me what this document is.

8 A. So this is a summary of the bookings for
9 Vestagen. And I think this is mid year, so June 2016.
10 So it's about halfway through the year. Our budget to
11 that point was \$651,000.

12 Q. So this is an email from Tony Pruna --

13 A. That's correct.

14 Q. -- who is the CFO?

15 A. Correct.

16 Q. It's dated January -- or July 26, 2016.
17 And it's year to date through June; is that right?

18 A. Yes.

19 Q. And it's giving the bookings and sales
20 year to date through June 2016. And that's attached
21 to it?

22 A. Yes.

23 Q. So if I'm looking at that attachment,
24 there is a table that talks about bookings. You see
25 where it says direct?

1 A. Yes.

2 Q. What's a direct booking?

3 A. Just a direct sale to the customer.

4 Q. Okay.

5 A. And then the wholesaler may be to a
6 distributor.

7 Q. And under the actual column, is that the
8 actual sales that are taking place during that
9 six-month period?

10 A. Correct.

11 Q. Okay. And that's what?

12 A. 1,070,000.

13 Q. And the second figure is the budget. Do
14 you know what that means?

15 A. That was what we were budgeted for
16 through that period of time.

17 Q. So in the variance, is that just how much
18 over the budget the actual number was?

19 A. That is correct.

20 Q. Okay. So the sales at that point, at
21 least the direct sales, had exceeded the budgeted
22 amount by \$526,000?

23 A. Yes. Yes, yes, yes.

24 Q. Now, there's also something that talks
25 about wholesalers. What does that mean?

1 A. Distributor. It could be an online
2 retailer. Could be a retail store.

3 Q. Okay. And those it looked like it was
4 budgeted 107, but none of those had taken place?

5 A. Zero.

6 Q. Do you have an explanation for that?

7 A. The model that we had adopted was
8 directed to the hospitals. So our focus was
9 institutional sales into the hospitals, not retail.

10 Q. There is a item called backlog. Do you
11 see that?

12 A. I do.

13 Q. The backlog number was \$362,038. Do you
14 know what that means?

15 A. My assumption is --

16 MR. RUTCHOW: Your Honor, I'm going to
17 object to the extent he's assuming. That's
18 speculating.

19 THE COURT: Did Mr. Bold tell you what
20 this meant?

21 THE WITNESS: No. Just from my
22 experience, Your Honor.

23 THE COURT: I would think that you would
24 know what this chart means. Overruled. What is that?

25 THE WITNESS: Back orders. The inability

1 to provide the product.

2 BY MR. ZENNER:

3 Q. Was there an ongoing problem at Vestagen
4 with delivering product?

5 A. Absolutely.

6 Q. Tell the Court about that. What was
7 happening and why?

8 A. They -- that was the biggest problem with
9 the company is they could not manufacture and provide
10 the product. So it was a handicap for myself, my
11 sales team getting customers engaged and then telling
12 them that they had to wait six months for the product
13 to show up. The same is applicable to Northwell as
14 well.

15 Q. What do you mean?

16 A. That was a large customer. They spend
17 about \$8 million a year on scrubs. The hospital
18 actually purchases the scrubs for their employees.
19 And so once all the excitement, we got them to sign,
20 there was a -- nothing but back orders.

21 Q. Did that impact the total sales?

22 A. Absolutely.

23 Q. How?

24 A. Well, you can't book a sale until the
25 customer receives it. So you may have great

1 excitement, signature from the hospital system, but
2 until you ship it and the customer receives it, you
3 can't book it as a sale.

4 Q. Just to make sure I understand this,
5 about a backlog figure, does that represent sales that
6 had been made but not delivered?

7 A. That is correct. That is the difference
8 between booking and sales. Bookings are -- we got the
9 customer to agree to buy. And then sales is when they
10 actually receive the product.

11 Q. And look at the revenue column or the
12 row. Do you see that?

13 A. I do.

14 Q. Actual revenue at that point was
15 \$708,000; is that right?

16 A. Correct.

17 Q. And what was the budgeted figure?

18 A. 651,000.

19 Q. No, the budgeted. Under the -- under the
20 revenue, do you see --

21 A. 543,000.

22 Q. Is that 543?

23 A. Yes.

24 Q. And what was the variance?

25 A. 164,000.

1 Q. So read the total revenue figures.

2 A. Actual 708,000, budgeted 651,000, with a
3 variance of 57,000.

4 I may point out that in the past Vestagen
5 never once made their revenue numbers in the history
6 of the company.

7 Q. And that was my next question. This
8 document, does it indicate to you that you're meeting
9 the revenue goals?

10 A. Absolutely. We're on the right track.

11 MR. ZENNER: I'd like to move that in as
12 the next exhibit.

13 THE COURT: Any objection?

14 MR. RUTCHOW: No objection, Your Honor.

15 THE COURT: 8 is received.

16 (Plaintiff Exhibit No. 8 was admitted.)

17 BY MR. ZENNER:

18 Q. How often did the board of directors meet
19 at Vestagen?

20 A. Quarterly.

21 Q. And did you participate in these
22 meetings?

23 A. Yes.

24 Q. What was your role?

25 A. I was the commercial leader, the VP of

1 sales.

2 Q. Were you -- did you give them an update
3 on how things were going, I guess?

4 A. I did.

5 Q. Why don't you look at
6 Plaintiff's Exhibit 9 and tell me what -- they look
7 like PowerPoint slides; is that right?

8 A. That is correct.

9 Q. Tell me what these are. What's the first
10 page?

11 A. Yes. This is the sales Q1 goals. So I
12 was measured from a performance standpoint both on my
13 MBOs, quarterly MBOs, as well as revenue.

14 Q. MBO?

15 A. Manage By Objectives. So basically tasks
16 in which to accomplish goals or objectives to
17 accomplish.

18 Q. Okay. There's a date on the bottom,
19 May 10, 2016. Does that indicate the date of the
20 board meeting?

21 A. It could. I don't recall specifically
22 the date of that board meeting, but it was typically
23 after the quarter. So as an example, January,
24 February, March, you may have a board meeting a month
25 later.

1 Q. So what is the second item? It says
2 initial phase of sales process. Reengineered to
3 reflect urgency and guaranteed success. All
4 information will be managed initially through
5 spreadsheets and all accurate accounts will be
6 included in the funnel. This will be followed by
7 implementing the new cloud-based CRM to manage the
8 funnel progress.

9 Now, that probably means something to
10 you, but can you explain to the Court what that
11 actually means?

12 A. Yes. So we went from the initial funnel
13 that you had presented earlier to an Excel
14 spreadsheet. And then the end goal was to take the
15 funnel, put it on a cloud-based CRN, which is a
16 customer -- it was a way to manage your customer base.

17 That way when it's cloud-based, you have
18 access on the road, everybody does. And part of the
19 challenges in our spreadsheet was we had to send it
20 around to everybody. Everybody put their input, save
21 it, sent it to the next rep, put their input, save it,
22 et cetera. Cloud-based eliminates that.

23 Q. So that had been completed as of Q1?

24 A. That is correct.

25 Q. Okay. And next item is four new accounts

1 placing orders for VESTEX?

2 A. Correct.

3 Q. Had that been completed?

4 A. Yes.

5 Q. Hire agreed upon number of sales reps,
6 three most likely. Looks like at that point two had
7 been hired?

8 A. Yes.

9 Q. Who were the two that were hired?

10 A. John Black and Chelle Barker.

11 Q. Now, the rest of these slides, looks like
12 there's a slide for Q2 and there's a slide for Q3.
13 Does that mean second quarter and third quarter?

14 A. Yes.

15 Q. And, again, were these all slides that
16 you presented to the board of directors?

17 A. That is correct.

18 Q. And tell me about the process that you
19 used to complete and get the information on these
20 slides approved.

21 A. So everybody was responsible for their
22 functions, marketing, sales, operations, et cetera.
23 And we would build our slide for the board
24 presentation and we would send it to Bill Bold to
25 compile and to present to the board.

1 Q. Did he approve the accuracy of these
2 slides?

3 A. Yes.

4 Q. And these were, in fact, presented to the
5 board?

6 A. That is correct.

7 Q. And he was probably sitting right there
8 while they were being presented to the board; is that
9 true?

10 A. That's correct.

11 Q. He's a member of the board?

12 A. That's correct.

13 Q. Well, let's look at your second quarter
14 goals. First one is 15 VNOWs with dates set for the
15 awareness event. Tell me what that means.

16 A. The strategy was, because this was such
17 an innovative new technology, that it was difficult
18 for a clinician to wrap their head around the
19 technology. So we deployed a strategy by doing these
20 VNOWs where we would show up at the hospital. We
21 would articulate the scrubs in a board room or
22 cafeteria, et cetera.

23 And that way the clinicians can filter
24 in, take a look at the technology, the scrubs, touch,
25 feel, et cetera. It's clothing, like anything else.

1 Clinicians want to touch it and so forth. So it was
2 really an awareness event. And that was the first
3 step in our sales process.

4 THE COURT: What does VNOW stand for?

5 THE WITNESS: It was VESTEX now. That
6 was the acronym. So VESTEX being the brand technology
7 and then now was, you know, VESTEX now.

8 THE COURT: Okay.

9 BY MR. ZENNER:

10 Q. So this was part of a way to generate
11 sales, I guess; right?

12 A. Absolutely.

13 Q. And there had been 15 of these VNOWs set;
14 is that right?

15 A. That is correct.

16 Q. Okay. And that was complete?

17 A. That's correct.

18 Q. And the next goal was five VNOW web
19 stores built with orders placed. Tell me what that
20 is.

21 A. So part of our deployment strategy was to
22 build a micro site at the hospital so the clinicians
23 can go on and buy these scrubs. We didn't really have
24 a mechanism to sell. The margins were not appropriate
25 for retail. So we built these micro sites to where

1 the clinicians can purchase.

2 Q. And this slide indicates that five VNOW
3 web stores had been built and orders had actually been
4 placed; is that right?

5 A. That is correct.

6 Q. And that was completed?

7 A. Correct.

8 Q. Next goal was ten new hospitals buying
9 VESTEX compared to quarter 1. Was that completed?

10 A. Yes.

11 Q. Next goal is build and implement metrics
12 to design a forecasting model based on rep targeting
13 and productivity.

14 Now, that's noted to be complete, but
15 tell the Court what that means.

16 A. So one of the challenges that -- and,
17 again, this was the delineation of our roles and
18 responsibilities. Bill Bolds' responsibility was to
19 go out and get additional funding. And part of that
20 funding process is to build some predictability in our
21 revenue models.

22 So I was tasked with building and
23 implementing metrics. In other words, if you hire a
24 rep, how long does it take for them to start becoming
25 productive, start appreciating sales. So that was

1 part of that metrics that I built.

2 Q. Next goal was execute one GPO strategic
3 partner agreement. GPO is, again, a group purchasing
4 organization?

5 A. That is correct. And that's where I
6 worked for many years earlier on in my career, is a
7 GPO.

8 Q. Tell me what a GPO does.

9 A. A GPO does all the RFPs for hospitals,
10 they do all the due diligence on technologies. Once
11 you get an award, then the hospitals can purchase all
12 the terms and conditions of a negotiated pricing,
13 et cetera. All hospitals belong to a GPO.

14 Q. Okay. And that's listed as pending?

15 A. Yes.

16 Q. Do you know if that was ever completed?

17 A. It was completed.

18 Q. With who?

19 A. Premier.

20 Q. The third quarter goal -- this slide is
21 dated, I guess, August 10 of 2016 down in the bottom.
22 First goal was to achieve Q3 revenue target of
23 \$717,000, and that's listed as completed?

24 A. Correct.

25 Q. And that's accurate?

1 A. Yes, that's per the revenue projections.

2 Q. Next goal was to have 15 new hospitals
3 placing orders for VESTEX. Was that completed?

4 A. Yes.

5 Q. Next goal was launch GPO agreement, and
6 work with partners for marketing and lead generation.
7 What was the status of that?

8 A. Completed.

9 Q. Next goal was to successfully implement
10 minimum of one successful channel partner health
11 system integration, AllHeart, ACW.

12 A. All Custom Wear, yes.

13 Q. Tell me what that means.

14 A. Those are online retailers. So we -- I,
15 got the agreement with All Custom Wear.

16 Q. And they sell the product online?

17 A. That is correct.

18 Q. Okay. Final one is have each territory
19 manager begin the implementation/ordering at one large
20 health system in their territory. And that had been
21 completed?

22 A. Yes, it has.

23 Q. Now, again, was this slide approved by
24 Mr. Bold?

25 A. That is correct.

1 Q. And it was presented to Mr. Bold?

2 A. Yes.

3 Q. It was presented to the rest of the
4 board?

5 A. Yes.

6 Q. And did anyone in the board -- did
7 Mr. Bold say, hey, wait a minute, that's not accurate?

8 A. Never.

9 Q. Did anyone in the board question its
10 validity?

11 A. No.

12 MR. ZENNER: I'd like to move those
13 exhibits in.

14 THE COURT: Any objection to P9?

15 MR. RUTCHOW: No, Your Honor.

16 THE COURT: Received.

17 (Plaintiff Exhibit No. 9 was admitted.)

18 BY MR. ZENNER:

19 Q. We spoke some earlier, Mr. Beyer, about a
20 sales funnel. And one of your jobs was to further
21 develop the sales funnel and -- is it fair to say that
22 part of that is to get more hospitals into the sales
23 funnel?

24 A. Excuse me, pardon me. That is the goal.

25 Q. If you will look at

1 Plaintiff's Exhibit 10. Tell me what that is. Tell
2 the Court what that is. It's an email dated 8-23.

3 A. This is the email from Bill Bold?

4 Q. Yes.

5 A. Just an email from him asking everybody
6 if it was accurate, the information.

7 Q. As of 8-23-2016, is it your understanding
8 that this was the status of the sales funnel at that
9 point?

10 A. Yes.

11 Q. Okay. And the sales funnel is the
12 spreadsheet that's attached?

13 A. Yes, exactly. So this was the Excel --
14 so we moved from that elementary sales funnel when I
15 started to this Excel spreadsheet. And you can --

16 Q. So this shows -- just walk through what
17 these mean. I'm looking at the spreadsheet. There's
18 a column for sales rep. So that's just the sales rep
19 who was assigned to that particular hospital; is that
20 right?

21 A. That is correct.

22 Q. Okay. And John Black was one of your
23 sales reps?

24 A. That is correct.

25 Q. And that was someone that you had

1 actually worked with at Masimo?

2 A. That is correct.

3 Q. The account name, is that the name of the
4 hospital?

5 A. Yes. Would you like me to walk through
6 those?

7 Q. Yes, walk through one --

8 A. So this is --

9 Q. -- and what this document shows. I'm
10 sorry. We got to not talk over one another --

11 A. I apologize.

12 Q. -- because it makes the court reporter's
13 job impossible.

14 A. I got the look.

15 Q. I've gotten that plenty of times too.

16 A. So the first column is the sales rep.
17 Then the account name. And then the opportunity type.
18 And HCW's healthcare worker. OR is in the OR. And
19 then we had five buckets, discovery, qualifying,
20 et cetera, and they all had metrics. So you had to
21 sort of check off the metrics to move on to the next
22 level.

23 That's how we trained sales folks to
24 ensure that they're moving through an articulated
25 sales process. The product, SS stands for signature

1 stretch. The department that we were selling to,
2 nursing. And then the number of sets. And this
3 was -- this was really a metrics that we came up with,
4 how many sets.

5 It's difficult to say how many sets is a
6 nurse going to order in a year, so we had a metric.
7 The ASP is average sales price, \$50 per set. And then
8 if you take how many sets we believe they're going to
9 be ordering times the average sales price, that gives
10 you an opportunity value.

11 Then we have the forecast close. When do
12 we expect this business to close and they start
13 purchasing. And then we have a confidence indicator.
14 This one is, yeah, we're 50 percent confident this is
15 going to close on this date. And then the next column
16 is the revenue opportunity.

17 Q. And this document is three pages long.
18 It's got a total on the end of it. Do you see the
19 last page?

20 Actually, if you -- let me back up a
21 little bit. If you look at this document about
22 halfway down on the first page of it, there's a
23 \$626,000 figure. Do you see that?

24 A. Yes.

25 Q. Okay. And is that the total of the

1 numbers that appear before it?

2 A. Yes.

3 Q. So then if you went down to the next
4 page, there is a number 587,211?

5 A. Yes.

6 Q. Is that the total of that next set of
7 numbers?

8 A. That is correct. So if you look at what
9 we have in discovery, it's easy for us to look, we
10 have \$626,000 currently in the first stage of the
11 sales process. And then the same thing with
12 qualifying the second phase of the sales process,
13 that's how much we have opportunity in that sales
14 process.

15 Q. Okay. And on the second page there are a
16 number of numbers and then an \$886,000 figure. What
17 stage of the sales process were those accounts in?

18 A. Those were when we were doing those VNOW
19 onsite demonstrations.

20 Q. So there's a 90 percent confidence at
21 that point that that sale is actually going to take
22 place?

23 A. Yes.

24 Q. And then the final figure --

25 THE COURT: Well, there's also 90 percent

1 that the sales's not going to take place; right?

2 THE WITNESS: There is that, yes. But
3 this was our confidence, Your Honor. This is our
4 confidence level in that. So, in other words, if
5 we're doing VNOWs, there's a high probability that
6 we're going to close.

7 THE COURT: Well, then why do more than
8 half of them say 90 percent no?

9 THE WITNESS: These are -- if you look at
10 the column above it, says PO, purchase order, and a
11 question mark. There was -- we were really seeking
12 the purchase orders from the hospitals, those
13 hospitals that purchase for their employees.

14 But by and large, most of it was, once we
15 did the VNOW demonstrations, the healthcare workers
16 themselves would buy it. So you'll see here, if it's
17 a PO, that means no, it's not an institutional
18 purchase, which means that the healthcare workers have
19 to buy it. As opposed to yes, that could be an
20 institutional purchase.

21 BY MR. ZENNER:

22 Q. So the yes or no doesn't mean the sale is
23 not -- it's 90 percent --

24 A. No, it's just where the money's coming
25 from.

1 Q. Okay, that clarifies.

2 So if I'm reading this accurately, all of
3 the potential business in the sales funnel as of this
4 date totals -- and I added these up myself,
5 \$2,718,133; does that sound about right?

6 A. That sounds about right.

7 Q. Now, compare this sales funnel to
8 Exhibit 4, if you would. How would you compare the
9 sales funnel as it existed when you started versus the
10 sales funnel as it existed at the end of August?

11 A. Remarkably different.

12 Q. Which is better?

13 A. Much better, yes.

14 MR. ZENNER: I'll go ahead and move that
15 in as the next exhibit.

16 THE COURT: Any objection to P10?

17 MR. RUTCHOW: No objection, Your Honor.

18 THE COURT: Received.

19 (Plaintiff Exhibit No. 10 was admitted.)

20 BY MR. ZENNER:

21 Q. Let's turn to Plaintiff's Exhibit 11.
22 This is an email from Tony Pruna, and we had seen an
23 earlier one of these back in May. Have you turned to
24 that tab yet, sir?

25 A. Yes. Yes. Sorry.

1 Q. Okay. And this is a weekly sales report
2 from Tony Pruna as of 9-19-2016? Or actually it's
3 through September 19, 2016, I guess.

4 A. Yes.

5 Q. Okay. That was addressed to you and all
6 of the others on the executive team?

7 A. Yes.

8 Q. On the sales team and the --

9 A. Yes, the entire sales team.

10 Q. As of this date, if you turn to the last
11 page, what were the total sales on that date as of
12 that point?

13 A. 1,060,000.

14 Q. Once again, Exhibit 8, which was a
15 similar report sent about -- sorry, not Exhibit 8.
16 Exhibit 5 sent in May.

17 A. Yes.

18 Q. Again, what were the total sales in that
19 report in May?

20 A. 390,000.

21 Q. Over a four-and-a-half-month period those
22 sales had increased over a million?

23 A. Yes.

24 Q. What day were you terminated?

25 A. September 22.

1 Q. And we'll get into that conversation in a
2 minute. But let's talk about the days leading up to
3 your termination.

4 MR. ZENNER: If I haven't done so, could
5 I move in Plaintiff's 11?

6 THE COURT: Any objection?

7 MR. RUTCHOW: No objection, Your Honor.

8 THE COURT: Received.

9 (Pleading Exhibit No. 11 was admitted.)

10 BY MR. ZENNER:

11 Q. If you will look to
12 Plaintiff's Exhibit 12. This is an email dated
13 9-14-2016, so eight days before you were terminated.
14 And it's from Bill Bold. What is it pertaining to?

15 A. He had set up a board meeting presumably
16 at his home in Florida. And this was the logistics of
17 that meeting.

18 Q. For example, telling you what hotel to go
19 to?

20 A. Yes.

21 Q. Did you book your travel arrangements for
22 this?

23 A. I did.

24 Q. Was there any indication in this email
25 that they had cause to terminate you?

1 A. No.

2 Q. And had there been any mention of
3 termination?

4 A. No.

5 Q. And then you were told you had ten days
6 to cure any type of condition with your employment
7 performance?

8 A. No.

9 Q. Did you fully expect to go to this
10 meeting?

11 A. Absolutely.

12 MR. ZENNER: Move that in as the next
13 exhibit.

14 THE COURT: Any objection to P12?

15 MR. RUTCHOW: No objection, Your Honor.

16 THE COURT: Received.

17 (Plaintiff Exhibit No. 12 was admitted.)

18 BY MR. ZENNER:

19 Q. If you turn to Plaintiff's Exhibit 13,
20 this is an email from Bill Bold dated 9-16-2016, and
21 this is, I guess, six days before you were terminated.
22 Tell me what this email is about.

23 A. So the one hospital system that I
24 resurrected was Spectrum Health. That was the one I'd
25 indicated earlier that they hadn't spoken to anybody

1 at that hospital for nine months, yet it was -- they'd
2 indicated it was soon to close. That week I happened
3 to be conducting those VNOWs with my team at Spectrum
4 Health. It's a 45-hospital system up there.

5 So the conversation Bill Bold and I had,
6 it was a little frustrating that the hospital had put
7 us up on the fourth floor in a wing that was never
8 used. So the traffic was minimal. And so it was part
9 of our discussion that we need to not do this again.

10 In fact, John Black led this development,
11 he did a really nice job, but he left the company. So
12 I -- at the last minute I had to engage this customer
13 and participate in the VNOW.

14 Q. And this email starts, Jim, thanks for
15 the chat just now. So the two of you had had a
16 conversation?

17 A. Uh-huh (affirmative).

18 Q. Is there anything in this email that
19 would indicate to you that you're in danger of losing
20 your job?

21 A. No.

22 Q. Is there anything that mentions cause for
23 termination?

24 A. No.

25 Q. Was there anything in the conversation

1 that mentioned cause for termination?

2 A. No.

3 Q. Is there anything in this email that
4 talks about having ten days to cure some deficiency in
5 your performance?

6 A. No.

7 Q. Do you have any conversations -- or
8 during the conversation you had with him, did he talk
9 to you about having ten days to cure anything?

10 A. No.

11 MR. ZENNER: Move that in as the next
12 exhibit.

13 MR. RUTCHOW: No objection, Your Honor.

14 THE COURT: P13 is received.

15 (Plaintiff Exhibit No. 13 was admitted.)

16 BY MR. ZENNER:

17 Q. Turn to P14. This is an email from Bill
18 Bold dated September 20, 2016, to the team regarding
19 thoughts. So this is just two days before your
20 termination?

21 A. Correct.

22 Q. What is this email about?

23 A. It was just an email based on our
24 experiences. We were still building the plane as we
25 were flying and trying to figure out how to improve

1 the process. So that's just an assumption I'd make on
2 this email.

3 Q. He's asking for your thoughts on this
4 process?

5 A. Yes.

6 Q. When someone's asking for your thoughts
7 on a process going forward, does that tell you that
8 you're about to be terminated?

9 A. No.

10 Q. At this point did you have any reason to
11 believe you were --

12 A. No.

13 Q. -- going to be terminated?

14 A. No.

15 MR. ZENNER: Move that in as the next
16 exhibit.

17 MR. RUTCHOW: No objection, Your Honor.

18 THE COURT: P14 is received.

19 (Plaintiff Exhibit No. 14 was admitted.)

20 BY MR. ZENNER:

21 Q. Turn to P15. What were you doing on
22 September 20, September 21 and September 22?

23 A. Well, I believe it was on the 20th, maybe
24 the 21st I was flying back.

25 Q. From where?

1 A. From Spectrum Health in Grand Rapids,
2 Michigan, after spending I think four days onsite at
3 that hospital system.

4 Q. And look at P15. Tell me what this email
5 is about. That's an email exchange between you and
6 Bill Bold dated September 20 and then September 21.

7 A. Yes, these emails were in preparation for
8 the board meeting. And so we were trying to land on
9 revenue goals and also the upcoming Q4 goals.

10 Q. It looks like you write, I've got
11 communication in to Tony for clarification on Q3
12 goals. So is it fair to say that you were waiting for
13 some information to complete those --

14 A. Yes, I was waiting for the revenue from
15 our CFO, as well as the number of new orders.

16 Q. Now, to be fair, apparently Mr. Bold had
17 suggested -- some suggestions to you about how to
18 include more information or more detailed information?

19 A. Yes, he wanted some of this detail. I
20 didn't have it. They were finance, so I had to go
21 back to our finance department and get that
22 information pulled.

23 Q. Did you have any telephone conversation
24 with him about these slides?

25 A. I don't believe so. I think everything

1 was on email at that point.

2 Q. Did you read anything in this email that
3 would indicate to you that your job was in jeopardy?

4 A. No. He's asking for my Q4 goals.

5 MR. ZENNER: Move that in as the next
6 exhibit.

7 THE COURT: Objection?

8 MR. RUTCHOW: No objection, Your Honor.

9 THE COURT: Received, P15 is received.

10 (Plaintiff Exhibit No. 15 was admitted.)

11 BY MR. ZENNER:

12 Q. How would you describe Bill Bold's
13 temperament?

14 A. Chaotic.

15 Q. How do you mean?

16 A. He -- unpredictable. So one day he was
17 very complimentary, things were great, and the next
18 day he would go on rampages with whomever. He was
19 just a very chaotic individual.

20 Q. So tell me what happened on September 22,
21 2016.

22 A. He called me and --

23 Q. Where were you?

24 A. I was in my home office.

25 Q. Okay.

1 A. Now, again, I just flew in the day
2 before, having spent four days in Grand Rapids. And
3 he was frustrated, I think, at Spectrum, the lack of
4 sales, and I don't know what else. But at which point
5 he said he wanted to take over the sales team.

6 Q. What did you say?

7 A. What can I say? I said, I don't think
8 that's a good idea. And that's when he said, I'm --
9 he wanted to move me into a regional sales role,
10 stripping me of VP of sales position while he takes
11 over.

12 Q. Did he talk about what would happen to
13 your salary?

14 A. Nope. He just indicated that he wanted
15 to move me into a regional position.

16 Q. What was your response?

17 A. I -- no.

18 Q. When you say into a regional position, he
19 wanted to make you -- take you from vice-president
20 of -- senior vice-president of sales to sales rep?

21 A. Pretty much, yes.

22 Q. And you said -- I'm sorry, you said what?
23 Just tell --

24 A. I -- I was flabbergasted by this.
25 He's -- it was very challenging in dealing with

1 Mr. Bold, and so this didn't come to me as a surprise.
2 He had been really overstepping into my role and
3 responsibility and becoming increasingly more on a
4 day-to-day basis. It's -- he would talk over me. He
5 would talk louder.

6 So at that point I just said, no, I'm not
7 interested in that particular role. And then I said,
8 let's just talk about a severance. You know, let's
9 just part ways amicably. He said, I'm not going to
10 give you severance. How about three months.

11 I said, no, I -- my performance speaks
12 for itself. You have no cause. I deserve severance.
13 And that -- at which point he said, okay, let me talk
14 to the board and I'll get back to you.

15 Q. Did he tell you that he had cause to
16 terminate you?

17 A. No.

18 Q. Did he tell you why you were terminated?

19 A. No. He just wanted to take over sales.

20 Q. So he told you, I'm going to take over
21 the sales?

22 A. That's it.

23 Q. And no other reason for the termination?

24 A. None.

25 Q. That was the 22nd. Did you have any

1 conversation with Mr. Bold or anyone at Vestagen after
2 that?

3 A. Just via text --

4 Q. What was that text?

5 A. -- with Mr. Bold. He encouraged me to
6 take his offer. And I responded no, I stand by my
7 performance. I'm not going to accept your offer.

8 Q. And did you ever hear back from him after
9 that?

10 A. Yes. He had -- he'd indicated to me that
11 he was working with the board, and that he'll get back
12 to me shortly. And then he asked me how I was doing.

13 Q. Did Vestagen ever pay your six-month
14 severance?

15 A. No.

16 Q. Part of that severance provision also is
17 a continuation of your medical coverage. What
18 happened with your medical coverage?

19 A. They terminated that immediately.

20 Q. And if you look to P16, is that a letter
21 you got from United Healthcare telling you that your
22 coverage had been terminated?

23 A. Yes.

24 MR. ZENNER: Go ahead and move that in as
25 the next exhibit.

1 THE COURT: Any objection?

2 MR. RUTCHOW: Your Honor, I -- I'm not
3 sure where Mr. Zenner's going with this. I would
4 object to the extent that my understanding is the
5 plaintiff is not seeking any damages with regard to
6 healthcare premiums. So I'm not sure the relevancy of
7 this exhibit.

8 MR. ZENNER: The only reason this --
9 there appeared to be some dispute on the part of
10 Vestagen whether or not there was any breach by them
11 at all because there wasn't any time frame to pay the
12 severance agreement, other than it had to be paid
13 immediately.

14 And that seemed to be an issue at some
15 point so I wanted to establish that, look, they
16 terminated his health insurance immediately.
17 That's -- there was no question that this breach
18 occurred right then and there.

19 THE COURT: Overruled. I'll receive it.

20 MR. RUTCHOW: That's fine, Your Honor.

21 THE COURT: Exhibit 16 is in.

22 (Plaintiff Exhibit No. 16 was admitted.)

23 MR. ZENNER: I'm sorry. Was 15 moved in?

24 THE COURT: Yes.

25

1 BY MR. ZENNER:

2 Q. Just so we're clear, you never did
3 receive payment of your severance up to six months of
4 your salary or 112,500?

5 A. No, the only thing I received from them
6 two months later, they finally paid -- after we filed
7 lawsuit, they finally paid my expenses of 12,000 and
8 shorted me 2,000. It was about two months after.

9 Q. I want you to turn back to Exhibit 2, if
10 you would. And turn to the for cause definition on
11 page 2. If I'm looking at A, it reads, cause means,
12 A, your unauthorized use or disclosure of Vestagen's
13 confidential information or trade secrets which use or
14 disclosure cause material harm to Vestagen.

15 Did I read that correctly?

16 A. Yes.

17 Q. Have you ever knowingly engaged in the
18 unauthorized use or disclosure of Vestagen's
19 confidential information or trade secrets?

20 A. No.

21 Q. There was reference or has been some
22 reference in this case to an email I believe dated
23 March 30. Do you recall that email?

24 A. I do.

25 Q. And who was that to?

1 A. Her name was Lisa Doland. She was the
2 president of APIC, which is the Association for
3 Prevention Infection Control.

4 Q. What did you attach to that email?

5 A. I attached Vestagen clinical literature.
6 And so what happened prior to that is the chief
7 marketing officer -- all the literature, clinical
8 literature, white papers, those are all the most
9 important tools to a salesperson in the medical device
10 business -- was fragmented.

11 And the marketing person put everything
12 into a folder, that's part of his project. But he put
13 it into one folder and there was no distinction
14 between anything. It was just named, you know, white
15 papers, et cetera.

16 So when I was sending her this
17 information, what I sent her said Vestagen Clinical
18 Literature. So I just attached it as part of my
19 sending her -- you know, white papers information on
20 Vestagen.

21 Q. Did you forward a copy of that email to
22 someone?

23 A. Yes, I sent it to our marketing lead.

24 Q. So it's fair to say you weren't trying to
25 hide this from anyone?

1 A. No, of course not.

2 Q. Did you ever hear anything back about
3 that, any complaints from Vestagen about that?

4 A. No.

5 Q. Did Mr. Lessem send you an email
6 chastising you or anything?

7 A. No. I -- I recall a -- just a side bar
8 conversation, and we agreed that we shouldn't put
9 anything of confidential nature or anything you deem
10 confidential in the same sort of folder with
11 everything else. And he agreed.

12 Q. Was there any -- did you ever have a
13 conversation with Bill Bold about that email?

14 A. No.

15 Q. Did you ever get an email or anything
16 from Mr. Bold regarding that email?

17 A. Never heard anything from Bill Bold on
18 this.

19 Q. And I gather you weren't terminated until
20 six months later?

21 A. Yes.

22 Q. Was this mentioned as a reason for your
23 termination by Mr. Bold?

24 A. At the time? No.

25 Q. Yeah.

1 A. No.

2 Q. Do you have any reason to believe that
3 even if this was confidential information, that it
4 caused any harm?

5 A. Absolutely not.

6 Q. Are you aware of any financial harm this
7 this caused?

8 A. Zero.

9 Q. Any harm to Vestagen's reputation?

10 A. Nothing, no.

11 Q. Did you ever disclose any other
12 information that could be considered confidential
13 information of Vestagen's during presentations to
14 customers?

15 A. No.

16 Q. Did anyone ever mention to you that you
17 had?

18 A. No.

19 Q. Anyone at Vestagen ever warn you about
20 doing that?

21 A. No.

22 Q. I'm going to move you back to the cause
23 definition. And that is -- but let's go to C because
24 I think we have agreed during the pretrial conference
25 that B isn't an issue.

1 THE COURT: Is that right?

2 MR. RUTCHOW: Yes, Your Honor.

3 THE COURT: Okay.

4 BY MR. ZENNER:

5 Q. So C reads, your material failure to
6 comply with Vestagen's written policies or rules that
7 can reasonably be expected to result in material harm
8 to Vestagen. Do you see that?

9 A. I do.

10 Q. Before your termination, did you ever
11 fail to comply with Vestagen's written policies or
12 rules knowingly?

13 A. No. No.

14 Q. Before you were terminated, did Vestagen
15 ever provide you written notice that you failed to
16 comply with Vestagen's written policies or rules and
17 that it considered it cause for termination?

18 A. No.

19 Q. Anything like that in a communication?

20 A. No.

21 Q. Before you were terminated, did Vestagen
22 ever provide you with oral notice that you failed to
23 comply with Vestagen written policies or rules that it
24 considered cause for termination?

25 A. No.

1 Q. Before you were terminated, did Vestagen
2 ever provide you written notice that you failed to
3 comply with Vestagen's written policies or rules that
4 it considered cause for termination and that you had
5 ten business days to cure that condition?

6 A. No.

7 Q. Before you were terminated, did Vestagen
8 ever provide you oral notice that you failed to comply
9 with Vestagen's written policies or rules that it
10 considered cause for termination and that you had ten
11 business days to cure that condition?

12 A. No.

13 Q. If you look to sub part E, because I
14 think we have agreed that D is not applicable --

15 THE COURT: That's correct?

16 MR. RUTCHOW: Correct, Your Honor.

17 BY MR. ZENNER:

18 Q. Let's go to E. E reads, your gross
19 negligence in the scope of your employment that could
20 reasonably be expected to result in material harm to
21 Vestagen.

22 Did I read that correctly?

23 A. You did, yes.

24 Q. Before you were terminated, were you ever
25 grossly negligent in the scope of your employment with

1 Vestagen?

2 A. No.

3 Q. Before you were terminated, did Vestagen
4 ever provide you written notice that you were grossly
5 negligent in the scope of your employment that it
6 considered cause for termination?

7 A. No.

8 Q. Before you were terminated, did Vestagen
9 ever provide you oral notice that you were grossly
10 negligent and that it considered it cause for
11 termination?

12 A. No.

13 Q. Before you were terminated, did Vestagen
14 ever provide you written notice that you were grossly
15 negligent in the scope of your employment that it
16 considered cause for termination and that you had ten
17 business days to cure that condition?

18 A. No.

19 Q. Before you were terminated did Vestagen
20 ever provide you oral notice that you were grossly
21 negligent in the scope of your employment that it
22 considered cause for termination and that you had ten
23 business days to cure that?

24 A. No.

25 Q. In your experience, have you ever fired

1 an employee before?

2 A. Yes.

3 Q. If they were grossly negligent in their
4 performance of their duties, would you offer them
5 another position?

6 A. No.

7 Q. What about if they engaged in willful
8 misconduct?

9 A. No.

10 Q. Let's go to F. F is your willful
11 misconduct in the scope of your employment. I'll do
12 the same laundry list of questions to make sure we've
13 touched all of our bases. Before your termination,
14 did you ever engage in willful misconduct in the scope
15 of your employment at Vestagen?

16 A. No.

17 Q. Before you were terminated, did Vestagen
18 ever provide you written notice that you engaged in
19 willful misconduct in the scope of your employment and
20 that it considered cause for termination?

21 A. No.

22 Q. Before you were terminated, did Vestagen
23 ever provide you oral notice that you engaged in
24 willful misconduct in the scope of your employment
25 that it considered cause for termination?

1 A. No.

2 Q. Before you were terminated, did Vestagen
3 ever provide you written notice that you engaged in
4 willful misconduct in the scope of your employment
5 that it considered cause for termination and that you
6 had ten business days to cure it?

7 A. No.

8 Q. Before you were terminated did Vestagen
9 ever provide you oral notice that you engaged in
10 willful misconduct in the scope of your employment
11 that it considered cause for termination and that you
12 had ten business days to cure it?

13 A. No.

14 Q. Subsection G of the cause definition
15 reads, your continuing failure to perform assigned
16 duties after receiving written notification of the
17 failure from the board. Did you fail to perform your
18 assigned duties at Vestagen?

19 A. No.

20 Q. Did the Vestagen board of directors ever
21 provide you written notification of a continuing
22 failure to perform assigned duties?

23 A. No.

24 Q. Did the Vestagen board of directors ever
25 provide you written notification of a continuing

1 failure to perform assigned duties and that you had
2 ten business days to cure it?

3 A. No.

4 MR. ZENNER: And I believe we agree that
5 H is not applicable?

6 MR. RUTCHOW: That's correct.

7 BY MR. ZENNER:

8 Q. What have you done since your
9 termination?

10 A. I'm currently the COO of a medical device
11 company.

12 Q. And what's the name of that?

13 A. SourceMark.

14 Q. When did you start that position?

15 A. In September of this year.

16 Q. I don't want to get into issues that are
17 too pertinent to our Florida litigation, but there was
18 a period of time that you were a consultant for SPI
19 and also an employee of theirs; is that right?

20 A. That is correct.

21 Q. And a lawsuit was filed by Vestagen down
22 in Florida?

23 A. That is correct.

24 Q. Seeking injunction?

25 A. Correct.

1 Q. And so what happened to your role at SPI
2 during that time period?

3 THE COURT: Are we talking about
4 SourceMark? SPI, is that a different company?

5 MR. ZENNER: SPI is Strategic Partners,
6 Incorporated.

7 THE COURT: It's a different company.

8 THE WITNESS: Yes, ma'am.

9 MR. RUTCHOW: Your Honor, I'm not sure.
10 I guess I'm going to object to the extent that we had
11 agreed long ago that -- including in discovery that we
12 weren't going to go into issues post termination
13 because this was a breach of contract case. So the
14 extent we're getting into what he did after he was
15 terminated, I'm not sure the relevancy to what we've
16 got before us.

17 THE COURT: Relevance?

18 MR. ZENNER: Well, relevance is they
19 described him as this abomination of an employee and
20 now they have sued him in Florida for violating a
21 noncomplete, enjoined him, and did -- in fact, his
22 company put him on ice for 12 months. Now they've
23 kind of had their cake and eating it too. And I
24 wanted to make sure he --

25 MR. RUTCHOW: That case is in Florida.

1 THE COURT: I don't -- I don't hear any
2 relevance.

3 MR. ZENNER: If that's the case, why
4 would they even bother.

5 THE COURT: I don't hear any relevance.
6 Sustained.

7 BY MR. ZENNER:

8 Q. What are you seeking in this lawsuit?

9 A. My severance. And a breach of contract.

10 Q. Do you have any reason to believe that
11 Vestagen at the time it entered into the agreement did
12 not intend to pay the severance?

13 A. I do.

14 Q. What is that?

15 A. So Bill Bold in hindsight oversold --

16 MR. RUTCHOW: Your Honor, I'm going to
17 object to this line of questioning. The question was
18 what -- as nonresponsive. The question was what
19 information did he have at the time, and he just said
20 in hindsight. That seems to be -- that's not an
21 answer to the question.

22 MR. ZENNER: The question is, do you have
23 any information now that would lead you to believe
24 that at that time --

25 THE COURT: That's the question. That's

1 a relevant question. Overruled.

2 MR. RUTCHOW: That's fine, Your Honor.

3 THE WITNESS: I do. I think he saw me --
4 my contacts in this industry, my skills and expertise
5 in the health system sales process, that he provided
6 me the termination language -- or, excuse me, the
7 severance language. He also helped me with the stock.

8 He was sort of sweetening the pot to get
9 me to join the company. I believe he wanted me to do
10 all the heavy lifting in building the sales team,
11 sales infrastructure. All the heavy lifting that goes
12 into building the sales infrastructure. Once he felt
13 that he could take over, he just fired me so he could
14 take over the sales.

15 And he did this throughout our term
16 there. Once there was some momentum in a sales
17 process, he would remove me and then interject
18 himself, and so -- in order to take credit for the
19 opportunity. And he did that not just to me, but
20 other folks within the organization.

21 MR. ZENNER: I believe that's all I have.
22 Thank you.

23 THE COURT: Okay. I think we'll take a
24 15-minute recess at this time. We're in recess.

25 (Whereupon, a break was taken from

1 11:02 a.m. to 11:26 a.m.)

2 THE COURT: All right. We're ready for
3 cross. Let me ask a minute. You have not put in 17,
4 18 and 19 yet; right?

5 MR. ZENNER: We didn't.

6 MR. RUTCHOW: I don't think so,
7 Your Honor. We didn't discuss them at all.

8 THE COURT: Okay. All right.
9 Cross-examination, go ahead.

10 MR. RUTCHOW: Thank you, Your Honor.

11 **CROSS-EXAMINATION**

12 BY MR. RUTCHOW:

13 Q. Mr. Beyer, I want to start from the end
14 here. The testimony you gave at the end, if I recall
15 your original testimony at the very beginning, at the
16 time that you were interviewing being recruited by
17 Vestagen, Mr. Bold was also interviewing and being
18 recruited by Vestagen; is that right?

19 A. Correct.

20 Q. So you two were the -- you were the ones
21 being recruited and Vestagen was the one doing the
22 recruiting?

23 A. Yes, but Bill Bold took an active role
24 towards the end.

25 Q. Had he been hired by Vestagen?

1 A. I would -- yes. He had.

2 Q. At the time that --

3 A. He had made a verbal commitment to
4 Vestagen at that point.

5 Q. He had made a verbal commitment to
6 Vestagen at that point. At what point did he make the
7 verbal commitment?

8 A. It was prior to him providing me this
9 information, the severance package and the stock
10 information.

11 Q. Okay. Now, earlier in your testimony
12 when we were talking -- when you were talking with
13 Mr. Zenner about Plaintiff's Exhibit 7, which was the
14 email string regarding activities that had occurred on
15 June 14, could you look at that email for me? And I
16 think it starts with an email from you; is that right?

17 A. That is correct.

18 Q. And you're talking about having a very
19 good couple of days in Texas; correct?

20 A. Correct.

21 Q. Okay. And the first -- these are all --
22 if I'm correct, these three numbered paragraphs deal
23 with prospective customers; correct?

24 A. That is correct.

25 Q. And the first one is Memorial Herman?

1 A. Correct.

2 Q. While you were with Vestagen, did
3 Memorial Herman ever become a customer?

4 A. No.

5 Q. Okay. Next one is Texas Health Dallas.
6 While you were with Vestagen, did Texas Health Dallas
7 ever become a customer?

8 A. Not that I'm aware of.

9 Q. And Children's Dallas, while you were
10 employed by Vestagen, did Children's Dallas ever
11 become a customer?

12 A. Not that I'm aware of.

13 Q. And then the last paragraph you've got in
14 here is finally I just got final word that the Merit
15 Health System going forward. Did Merit Health System
16 ever become a customer?

17 A. They purchased product.

18 Q. How much?

19 A. I'm not sure of the total number.

20 Q. Was that to test the product?

21 A. It was individual healthcare workers
22 purchased as opposed to an institutional.

23 Q. So as an institutional customer, Merit
24 Health Systems never became an institutional customer;
25 is that correct?

1 A. As far as I know, that's correct.

2 Q. I think you testified on direct, that was
3 your primary job responsibility was to drive the
4 institutional sales; correct?

5 A. That is correct.

6 Q. So while this June 14 day sounded like a
7 very good day, in the end none of these prospects
8 turned into institutional customers, did they?

9 A. It's a lengthy sales process, as
10 testified earlier. But these were in the process.

11 Q. And I think when you were being asked
12 about this email, this time period of mid June 2014,
13 another question that Mr. Zenner asked you about was
14 whether or not in this time frame any concerns had
15 been raised about your job performance. Do you
16 remember that?

17 A. I remember him asking the question, yes.

18 Q. And your answer was, no, no concerns had
19 been raised about your job performance; correct?

20 A. That's correct.

21 Q. Okay. Well, isn't it true that two days
22 after your email trumpeting the horn on how good a day
23 you and Chelle had in Texas, you sent an email to a
24 representative of Children's Dallas that she took as
25 insulting to her intelligence?

1 A. That's correct.

2 Q. And ultimately you had to apologize to
3 that individual?

4 A. No, I didn't have to.

5 Q. You didn't have to, but you did send an
6 apology?

7 A. I did.

8 Q. Why did you send that apology?

9 A. I think the tone was a little passionate.
10 And I sent an apology letter saying -- I apologized
11 for my tone, and that was it. That was it.

12 Q. And you don't think that your email that
13 someone at Dallas Children's took as insulting their
14 intelligence had anything to do with Vestagen never
15 getting work from Dallas Children's Hospital?

16 A. It had nothing to do with it. She was
17 subsequently fired from her role. And she was
18 being -- she was not being supportive of the clinical
19 science, and that was my passion was certainly to get
20 her to review the clinical literature. But it was one
21 individual out of I think that was eight in the
22 meeting.

23 Q. Okay. Are you aware of Michelle Barker
24 sending -- forwarding your apology on to other people
25 at Dallas Children's?

1 A. Yes.

2 Q. And the response she got was, wait and
3 see?

4 A. I don't recall that specific term.

5 Q. Well, what -- do you recall anything
6 about what Dallas Children's response was when
7 Ms. Barker, one of your sales reps, forwarded your
8 apology on to other people at Dallas Children's?

9 A. As I recall, she sent it to one person,
10 because that person was upset. We were trying to
11 neutralize the circumstance, frankly.

12 Q. Did you decide on your own to send the
13 apology or did somebody suggest you do that?

14 A. I sent it on my own.

15 Q. So nobody at Vestagen told you you should
16 apologize to this woman?

17 A. Absolutely not.

18 MR. RUTCHOW: Your Honor, if I may pass
19 the witness and Your Honor a copy of an exhibit. This
20 is on defendant's original exhibit list, Exhibit 16.

21 THE COURT: Exhibit 16?

22 MR. RUTCHOW: Yes. And I've got a copy
23 for both the witness and the Court.

24 BY MR. RUTCHOW:

25 Q. And Mr. Beyer, what you've been handed is

1 Defendant's Exhibit 16. Is this the email exchange
2 between you and Sharon Holmes at Dallas Children's we
3 were just talking about?

4 A. Yes, it is.

5 Q. Okay. And her email to you was with all
6 due respect I need -- I read and comprehended the
7 literature. Please do not feign insult of my
8 intelligence. At this point I'd like to be left out
9 of future correspondence.

10 Do you see that?

11 THE COURT: Folks, I'm sorry, I have to
12 take a five-minute break. I have an emergency. I'll
13 be right back. Five minutes.

14 (Whereupon, a break was taken from
15 11:34 a.m. to 11:36 a.m.)

16 THE COURT: Sorry about that.

17 MR. RUTCHOW: That's fine, Your Honor.

18 THE COURT: All right. I need you to go
19 back and tell me which exhibit this is.

20 MR. RUTCHOW: This is from defendant's
21 exhibit list. It's Defendant's Exhibit 16.

22 THE COURT: 16, all right. And let's
23 start the testimony again.

24 MR. RUTCHOW: Sure.
25

1 BY MR. RUTCHOW:

2 Q. And just so it's clear for the record,
3 Mr. Beyer, Defendant's Exhibit 16 is a copy of the
4 email exchange between you and Ms. Holmes at Dallas
5 Children's that you ultimately apologized to her
6 about; correct?

7 A. I apologized for the tone.

8 Q. Okay. And you said she was fired. How
9 do you know that?

10 A. I heard through the grapevine.

11 Q. So you don't have any personal knowledge
12 that she was terminated, just what somebody told you?

13 A. I talked to somebody at the hospital.
14 She was terminated several months after that. She was
15 just a contentious individual.

16 MR. RUTCHOW: Your Honor, I'm handing up
17 what is Defendant's Exhibit 17 from our original
18 exhibit list.

19 THE COURT: Did you move 16 in?

20 MR. RUTCHOW: I did not, but I will.

21 THE COURT: All right. Any objection to
22 16?

23 MR. ZENNER: No, Your Honor.

24 THE COURT: Received.
25

1 (Defense Exhibit No. 16 was admitted.)

2 BY MR. RUTCHOW:

3 Q. Mr. Beyer, you've been handed what is
4 Defendant's Exhibit 17. Is this a copy of your
5 apology to Ms. Holmes?

6 A. Yes, sir.

7 Q. And, again, ultimately Vestagen did not
8 receive any business from Dallas Children's Hospital;
9 correct?

10 A. I'm not aware.

11 Q. If you could, turn to
12 Plaintiff's Exhibit -- I think you've still got the
13 notebook up there. Plaintiff's Exhibit -- let's see
14 if I get the right one. Exhibit 10. This was an
15 email -- I believe you testified this was an email
16 from Mr. Bold to you and your team attaching the
17 funnel; is that right?

18 A. Yes.

19 Q. And it's dated August 23, 2016. And if
20 I'm reading Mr. Bold's original email correctly, what
21 he says is, just do a gut check to ensure you still
22 believe the numbers in the current year revenue column
23 next to your accounts are still accurate.

24 Do you see that?

25 A. I do.

1 Q. Did you review and determine whether or
2 not these numbers were still accurate?

3 A. Most likely, yes.

4 Q. But you don't recall whether you did or
5 not?

6 A. Not specifically.

7 Q. If you'd turn over to the Quick Base --
8 he called it the Quick Base funnel. Is that what it
9 was known as?

10 A. That's the Cloud Base funnel, yes.

11 Q. So this is the Quick Base funnel. What
12 developed this Quick Base funnel?

13 A. Software engineers.

14 Q. I mean in terms of within Vestagen. Do
15 you know who developed and put in the various -- for
16 example, the various columns that are in here and the
17 volumes?

18 A. It was -- it was a challenge because that
19 was part of the problem is we had lots of cooks in the
20 kitchen. Bill Bold would make manipulations on the
21 funnel, not tell anybody, Milton Bugg would make
22 revisions to the funnel, not tell anybody. That was
23 part of the challenge that we had there.

24 Q. That was not my question, Mr. Beyer.

25 A. I misunderstood.

1 Q. The question was: Who developed --
2 because you've got columns across here, sales rep
3 account name, opportunity type, all of those things.
4 In terms of the framework to apply it to Vestagen, who
5 did that?

6 A. I did.

7 Q. Okay. When did you do that?

8 A. It was ongoing. I started in January,
9 and so from January through mid year, it was a
10 constant manipulation of the funnel.

11 Q. Okay. And make sure I understand, you
12 were the one primarily responsible for putting
13 together this Quick Base funnel for use at Vestagen;
14 is that right?

15 A. That's not accurate. I led, but Milton
16 Bugg, who was our VP on the west, did a good share of
17 the work on the funnel, and that was as directed by
18 Bill Bold.

19 Q. And then the information that is placed
20 into the funnel, the individual sales reps would put
21 that information in?

22 A. That is correct.

23 Q. Would you ever modify the information
24 that they put in there?

25 A. In collaboration with the sales rep.

1 Q. Okay. Well, for example, I'm looking at
2 the first set of numbers that is -- the status says
3 discovery. What does that mean, discovery?

4 A. Discovery, you're just -- you're
5 validating it that it's an opportunity.

6 Q. So is that the earliest stage?

7 A. It is the earliest stage.

8 Q. Okay. And did you have any parameters on
9 what confidence level you would put for opportunities
10 that were in the discovery phase?

11 A. Yes.

12 Q. What was that?

13 A. Well, it's right here, 50 percent.

14 Q. Okay. And then can you tell me why the
15 last six in the discovery phase with Milton Bugg are
16 all listed as 90 percent?

17 A. Because we had already been selling into
18 Kindred. So this was Kindred corporate, but we'd
19 already started selling into various divisions within
20 Kindred.

21 Q. So should this even be in the discovery
22 phase if it's got a 90 percent confidence?

23 A. No, and this was such a breathable
24 document. I mean, I can't tell you for sure if this
25 was accurate on this particular date. This was a big

1 contention at Vestagen.

2 Q. So you may or may not have reviewed this
3 to determine whether it's accurate. As we sit here
4 today you're telling me that at least this part on the
5 discovery is not accurate?

6 A. I didn't say that. I just said I can't
7 verify two years later, year and a half later if this
8 was the actual final funnel. I don't know if it's
9 been manipulated.

10 Q. By who?

11 A. I can't answer that.

12 Q. Who would manipulate it, Mr. Beyer?

13 A. I don't -- I can't answer that. I don't
14 know who would manipulate it.

15 Q. Well, can you tell me where this document
16 came from? Isn't it true that this is a document that
17 came from your computer that you had kept after -- of
18 Vestagen information that you kept after you left
19 Vestagen?

20 A. I don't understand the point of that
21 question.

22 THE COURT: You're talking about the
23 discovery process, where did this document come from.

24 MR. RUTCHOW: Yes, I am, Your Honor.

25 THE COURT: He may or may not know that.

1 Mr. Zenner, do you know where this
2 document came from?

3 MR. ZENNER: Yeah, this was a list of --
4 thousands and thousands of emails that he had from --
5 while he was at Vestagen. We produced whatever we
6 had.

7 THE COURT: So this came from his
8 computer.

9 MR. ZENNER: Yeah. His email account
10 that was a Vestagen account.

11 THE COURT: Okay.

12 BY MR. RUTCHOW:

13 Q. So if this document had been in your
14 possession on your computer ever since you left
15 Vestagen, who would have manipulated this document in
16 the last two years? Or year and a half.

17 A. I can't answer that. I don't know.

18 Q. Did you manipulate it?

19 A. I didn't, no.

20 Q. Okay. Well, regardless of whether it was
21 manipulated or not, I want to make sure I understand
22 your testimony. The 90 percent confidence level
23 should not be for any discovery-related opportunities;
24 correct?

25 A. Not entirely true. So you're splitting

1 hairs and I'll tell you why. So 90 percent confident
2 that we're going to continue the discovery process
3 with Kindred because we'd already sold into multiple
4 divisions. Our goal was to get the entire institution
5 of Kindred.

6 So if you look at some of the others, 50
7 percent, those were -- we were just starting the sales
8 process, but with Kindred, we had some history. We
9 knew that they would do institutional purchases.

10 Q. So now I need to go back since I'm not
11 sure I understand that answer. What is the
12 90 percent? I just heard you say the -- you were
13 90 percent confident you were going to continue the
14 discovery process. I thought your original testimony
15 was that this was a 90 percent you were actually going
16 to make a sale?

17 A. No. 90 percent probability it's going to
18 move into the next phase of sales process.

19 Q. Okay. All right. Now, if you would move
20 over to the next page, and there's a long list of the
21 third -- the third phase of the sales process, the
22 VNOW process. Do you see that?

23 A. Uh-huh (affirmative).

24 Q. And there's several of those listed. And
25 then the confidence level for all of those is

1 90 percent; is that correct?

2 A. That is correct.

3 Q. That is 90 percent that you would -- you
4 would close that sale?

5 A. 90 percent chance that it would move into
6 the next phase of the sales process, which would be
7 the close.

8 Q. And the next phase of the sales process
9 is closing the sale; correct?

10 A. Correct.

11 Q. So you're 90 percent confident you're
12 going to close these sales; correct?

13 A. Yes. And I'll point out that these
14 confidence levels came directly from Bill Bold. He
15 wanted these in. And it was 50 percent for the
16 discovery, 75 percent qualifying, 90 percent VNOW and
17 100 percent close. So they were not a metric per
18 account, but more if they're in that sales process,
19 this should be the probability they move on to the
20 next phase.

21 Q. Okay. So if they're in the discovery
22 phase, the confidence level that should be there
23 should be 50 percent?

24 A. If you're 50 percent confident that this
25 will move to the next sales process, yes.

1 Q. Okay. Well, I'm -- and so anything in
2 the discovery sales process should be 50 percent, is
3 that what you just said that Mr. Bold mandated?

4 A. Yes.

5 Q. So going back to what I said, those six
6 at the bottom that are 90 percent, that's not the
7 right number, is it?

8 A. No, that's unique because Kindred,
9 although Kindred was a corporate, they're structured
10 differently, and so they have multiple divisions. So
11 we had sold into several divisions -- at least two, I
12 should say. And so that gave us probability the other
13 divisions, once we finished the discovery process,
14 would move into the next sales phase.

15 Q. So who mandated this 90 percent for
16 Kindred?

17 A. I would -- it would be Milton Bugg.

18 Q. Well, would that be in defiance of
19 Mr. Bold's mandate that everything in the discovery
20 thing should be 50 percent?

21 A. Yes.

22 THE COURT: Does that mean that if it
23 wasn't 50 percent it should not be on this document?

24 THE WITNESS: Yes, ma'am.

25 THE COURT: Is that what you mean?

1 THE WITNESS: Yes, Your Honor.

2 THE COURT: When you say he mandated
3 50 percent, it had to be at least 50 percent or it
4 would not be on this list.

5 THE WITNESS: Yes.

6 BY MR. RUTCHOW:

7 Q. Going back to the VNOWs, Mr. Black has,
8 from what I can see -- and you hired John Black;
9 correct?

10 A. Correct.

11 Q. And John Black resigned in August; is
12 that right?

13 A. That's about right.

14 Q. 2016?

15 A. Correct.

16 Q. About a month before you were terminated?

17 A. Somewhere around there.

18 Q. Do you know why Mr. Black left?

19 A. Yes, I do.

20 Q. Why?

21 A. He -- it was a chaotic environment. We
22 both come from a very disciplined medical device
23 technology environment, and the environment at
24 Vestagen was not conducive to this market.

25 Q. Okay. And Mr. Black's got one, two,

1 three, four, five opportunities listed in VNOW that
2 are identified as 90 percent confident of getting
3 closed. Did any of those close?

4 A. 90 percent confidence that they're going
5 to move on to the next sales phase.

6 Q. Which we've already established is the
7 closed phase.

8 A. It could be, yes.

9 Q. Is there another phase on here that's
10 missing --

11 A. Well, there's that 10 percent that it
12 won't close. 90 percent probability that it will
13 close.

14 Q. Okay. Did any of Mr. Black's accounts
15 that are listed here in the VNOW stage of being
16 90 percent confident they're going to move to the next
17 stage, which is the close stage, did any of them ever
18 actually close?

19 A. I was terminated a month later. I don't
20 know.

21 Q. In the month while you were still there,
22 did any of them close?

23 A. They were in that process when I left, so
24 no. They were in the VNOW stage of the sales process.

25 Q. Would the same be true of the two listed

1 for Gerry Tighe, Christiana Hospital and St. Luke's
2 Hospital? By the time you were terminated had any of
3 those closed?

4 A. No.

5 Q. And how about the Texas Health Dallas and
6 Texas Health Resource and Merit Health System that are
7 listed, is it Chelle or Chelle Barker?

8 A. Chelle.

9 Q. Chelle Barker. Did any of those close?

10 A. Institutionally, not that I'm aware of.

11 Q. And then the ones for Northwell and
12 Kindred, did those actually close?

13 A. So I know there was appreciated revenue
14 in Northwell. I'm not sure about Kindred.

15 Q. And I think I recall from earlier
16 testimony that Northwell was -- let me step back for a
17 second.

18 Isn't that true that the two major
19 institutional customers of Vestagen while you were
20 employed were Baptist Health System and Northwell?

21 A. Northwell came on after I joined.

22 Q. Right. But while you were employed,
23 those were the two major institutional --

24 A. Yes.

25 Q. Right. And you were not responsible for

1 any other institutional entity becoming a customer of
2 Vestagen, were you, besides Northwell?

3 A. Well, that's an inaccurate
4 characterization. This is a long sales process. I
5 was there for nine months. So if you look at what we
6 did in terms of getting customers into the sales
7 process, it was remarkable, but I wasn't there long
8 enough to close those hospitals.

9 Q. And so while you were there, no other
10 hospitals closed besides Northwell; correct?

11 A. From an institutional standpoint? Now,
12 we had healthcare workers buying scrubs, but from an
13 institutional purchase, I'm -- no, I don't recall.

14 Q. And Northwell was a -- Vestagen was
15 pursuing Northwell. I believe you said it was Brian
16 Crawford who was pursuing Northwell before you were
17 ever hired; correct?

18 A. Yes.

19 Q. Your testimony was you got involved in
20 the Northwell process afterwards; is that right?

21 A. Almost immediately upon my start date.

22 Q. What did you do to move the sales process
23 along with Northwell?

24 A. So I had a number of executive meetings.
25 There were at least three, perhaps more. I was the

1 one that drafted the early communication to the
2 primary point of contact -- his name was John Silva --
3 to articulate the solution and provide, you know,
4 clinical evidence and so forth. So I was the conduit
5 initially. Once we had some momentum there, that's
6 when Mr. Bold ingratiated himself.

7 Q. Are you aware of whether or not Mr. Bold
8 had existing contacts at Northwell?

9 A. He did not.

10 Q. Earlier we talked about -- I think one of
11 your responsibilities was in addition to the
12 institutional sales to hospitals, to try and sign up
13 agreements with these group purchasing organizations;
14 is that right?

15 A. That generally falls under the
16 responsibility of a sales leader.

17 Q. Okay. And while you were there, Vestagen
18 signed an agreement with one group purchasing
19 organization; correct?

20 A. Correct.

21 Q. What was the name of that?

22 A. Premier.

23 Q. Okay. Who was your primary contact at
24 Premier?

25 A. I have a number of them. But Mike

1 McGuire was one of the key contacts there as well as
2 Andy Brailo, who Bill Bold knew from a previous life
3 as well.

4 Q. Okay. And I remember from your -- when
5 we discussed this earlier in your deposition, you were
6 involved with Premier and then Mr. Bold got involved
7 with Premier; correct?

8 A. Unbeknownst to me.

9 Q. Well, you had email communications with
10 him that he was involved; correct?

11 A. After the fact.

12 Q. Okay. And ultimately it was not until
13 Mr. Bold got involved that the contract was signed;
14 correct?

15 A. Yes, but I've got -- he gave me very
16 clear direction to stay out of it. This was his. He
17 wanted to do it.

18 Q. Are you aware with either Northwell or
19 Premier of any concerns expressed by the customer with
20 your interactions with those customers?

21 A. Not one.

22 Q. I believe you were not satisfied with
23 Mr. Deutscher as a sales rep; is that right?

24 A. That is correct.

25 Q. Why?

1 A. He didn't have any experience. He's
2 never been a salesperson.

3 Q. Did it have anything to do with his age?

4 A. Had nothing to do with his age.

5 Q. Can you tell me why you describe him as
6 elderly and cantankerous?

7 A. Well, he was -- I could have probably
8 chosen better words, but he was near -- he was about
9 80 years old, and he was -- I inherited him, and he'd
10 been on board for a month prior to me joining. And so
11 to characterize him, I had a gentleman who was 80
12 years old, who was now a sales rep, and he had been a
13 hospital administrator his whole career, so he was
14 used to being in authority. It was challenging for
15 him.

16 Q. So you were also concerned that he was
17 out sick much of the time that you worked at Vestagen;
18 correct?

19 A. Well, concerned, yeah, I had some -- a
20 resource that was out of pocket for over four months.

21 Q. Did that contribute at all to your desire
22 to terminate him?

23 A. No.

24 Q. Okay. Did you ever tell anyone at
25 Vestagen that you thought Mr. Deutscher suffered from

1 dementia because of his age?

2 A. No. I did express to Mr. Bold that I saw
3 a lot of forgetfulness, but I never characterized it
4 as dementia.

5 Q. Okay. You and Mr. Deutscher had a
6 disagreement over how to sell to the -- to a customer
7 known as Hill Country Memorial, didn't you?

8 THE COURT: Customer named what?

9 MR. RUTCHOW: Hill Country Memorial.

10 BY MR. RUTCHOW:

11 Q. You-all had a disagreement over how to
12 sell that customer, didn't you?

13 A. No, I wouldn't characterize it as
14 disagreement at all.

15 Q. Okay. How would you characterize it,
16 then?

17 A. He -- I think for the first time, they
18 had -- this Hill Country was a customer that they
19 could not get them to buy. It was out in the middle
20 of the hill country in Texas. They were spending
21 thousands of dollars traveling and visiting this
22 customer for a total of \$12,000-a-year sale.

23 But it was a strategically important one
24 in Texas. And so I flew out there, met with the
25 material manager and the powers that be. And I

1 attempted to get this thing moved along, because
2 nothing had happened there for over a year.

3 And the comment I made to the material
4 manager that now's an opportunity to lock in these
5 prices. Because of the demand of the technology,
6 there could be a price increase. And I was really
7 trying to get them to move on the ball, basically.
8 And Mr. Deutscher did not like that.

9 Q. So he disagreed with your style?

10 A. Yes.

11 Q. Okay. Thought it was too aggressive?

12 A. He's not a professional salesperson.
13 He's never been in this before, so I think he was a
14 fish out of water. He didn't understand.

15 Q. Did he think your approach was too
16 aggressive?

17 A. He never use the those terms too
18 aggressive. He was not in favor of that.

19 Q. Okay. And ultimately Mr. Deutscher
20 requested that he no longer report to you; correct?

21 A. That's what I understand.

22 Q. Okay. He made that request to Mr. Bold;
23 is that right?

24 A. Apparently, yes.

25 Q. And so for the remainder of your

1 employment at Vestagen, Mr. Deutscher reported
2 directly to Mr. Bold?

3 A. Yes.

4 Q. Are you aware of any other of your sales
5 reps that moved from reporting to you to Mr. Bold
6 during your employment?

7 A. Yes, this was all behind my back. So I
8 wasn't aware that Brain Crawford was reporting to Bill
9 Bold. This was sort of the divisive nature of this
10 organization.

11 Q. Do you know why Brain Crawford was
12 reporting to Mr. Bold?

13 A. My suspicion is that he felt that he was
14 the chief business development officer, and reporting
15 to a VP of sales was beneath him.

16 Q. Do you think it had anything to do with
17 you denigrating him and demeaning him?

18 A. Never.

19 Q. So you never did that?

20 A. I responded in email curtly to him
21 because he did not understand what his sales region
22 was, and this was several months in. And I was
23 frustrated.

24 Q. What does curtly mean? What did you tell
25 him?

1 A. I'm sorry?

2 Q. What does curtly mean? What did you say
3 to him?

4 A. I don't recall specifically.

5 Q. Okay.

6 A. I challenged him on some of the comments
7 he made.

8 Q. And isn't it true that in March of 2016
9 you sent an email to the founder of the company, Ben
10 Favret, that he took as a threat?

11 A. Yes.

12 Q. So I'm clear, your testimony is is that
13 Mr. Bold never discussed with you the issue that led
14 both Mr. Deutscher and Mr. Crawford to report directly
15 to Mr. Bold instead of to you?

16 A. So with Mr. Deutscher, yes. And it was
17 let him report to me, we'll get everything out of him
18 and we'll terminate him. That was Mr. Bold's comments
19 to me. We were both on the same page about his lack
20 of experience and productivity in that field.

21 We both agreed on that and we felt that
22 this was the best option for him to report to Bill,
23 get what we can, and then Bill would terminate him.

24 Q. So this wasn't done behind your back?

25 A. Not with Gene Deutscher, but with Brain I

1 had no idea.

2 Q. And Mr. Bold didn't have any
3 communications with you about why Mr. Crawford was
4 reporting to him?

5 A. No. I didn't know.

6 Q. Any communications with you at all about
7 Mr. Crawford being upset with the way you treated him?

8 A. Not that I recall.

9 Q. So is it possible that it occurred, that
10 you just don't remember?

11 A. No.

12 Q. Okay.

13 MR. RUTCHOW: I think that's the
14 original. We did those in color, so they're all...

15 Your Honor, I've passed up to the witness
16 documents marked as Exhibit 18 from our original list.

17 THE COURT: Okay.

18 BY MR. RUTCHOW:

19 Q. Mr. Beyer, this is an email string. Last
20 email in the string is an email from you to Ben Favret
21 dated March 22, 2016. Do you see that?

22 A. Yes.

23 Q. And your email to Mr. Favret says, these
24 communications defy even basic courtesy, much less
25 professionalism. I am stumped. I will ensure that

1 changes occur so I'm allowed to do my job as
2 effectively as possible. Thanks, Jim.

3 Did I read that correctly?

4 A. You did.

5 Q. And this is the email that Mr. Favret,
6 the founder of the company, took as a threat; correct?

7 A. That is the one, yes.

8 Q. At this time in March of 2016, what was
9 Mr. Favret's position with the company?

10 A. Unknown, frankly. He was founder, but he
11 had been fired from the board earlier in the previous
12 year. So he was allowed to operate with impunity, and
13 that was the challenge. He traveled where he wanted,
14 met with customers. And I was trying to put together
15 a very defined sales process, and he wasn't
16 communicating. He would send FYI after they were down
17 the road or what have you.

18 Q. So to make sure I understand, your
19 testimony is is that at the time this occurred,
20 Mr. Favret was no longer on the board?

21 A. He was on the board.

22 Q. So he was on the board --

23 THE COURT: You said he'd been fired from
24 the board.

25 THE WITNESS: I'm sorry, fired from CEO.

1 BY MR. RUTCHOW:

2 Q. So as of March 2016, Mr. Favret was still
3 on the board of directors?

4 A. He was on the board. In terms of his
5 roles and responsibility, I think it was yet defined
6 at that point.

7 Q. All right. And after receiving this
8 email, Mr. Favret indicated to you that he thought
9 your email constituted a threat; correct?

10 A. He sent me a text and he asked me, he
11 said, are you threatening me. And I said, absolutely
12 not. We -- we talked on the phone. I said, listen,
13 this is -- my intent of this email is we got to figure
14 out a better process of communication. I can't not
15 know what's going on in the field.

16 Q. Okay.

17 THE COURT: Are you moving that into
18 evidence?

19 MR. RUTCHOW: I was just about to,
20 Your Honor. And I think I moved 16 and 17.

21 THE COURT: You haven't moved 17 in.

22 MR. RUTCHOW: I will move 17 and 18,
23 Your Honor.

24 THE COURT: Any objection to 17 or 18?

25 MR. ZENNER: No, Your Honor.

1 THE COURT: Both received.

2 (Defense Exhibits Nos. 17 and 18 were
3 admitted.)

4 MR. RUTCHOW: Your Honor, I'm going to
5 hand up to the witness a document that was originally
6 marked as Defendant's Exhibit 5 on our exhibit list.

7 BY MR. RUTCHOW:

8 Q. Mr. Beyer, do you recognize this as an
9 email that you sent on June 30, 2016, to Marc Lessem?

10 A. Yes.

11 Q. I believe earlier you testified that
12 Mr. Lessem was the marketing lead for Vestagen; is
13 that right?

14 A. Correct.

15 Q. And in this email you accused Mr. Lessem
16 of having emotional issues for which he needed
17 professional help, didn't you?

18 A. That's correct.

19 Q. And you agree with me that it was
20 inappropriate for you to have sent that email?

21 A. Not my finest moment. In context it was
22 late at night, I was in New York, and if you read the
23 email prior to that, it elicited a response.

24 Q. Did Mr. Bold have any discussion with you
25 about the inappropriateness of the -- of your language

1 with Mr. Lessem?

2 A. No.

3 Q. Okay.

4 MR. RUTCHOW: We would move to admit
5 Defendant's 5, Your Honor.

6 THE COURT: Any objection?

7 MR. ZENNER: No, Your Honor.

8 THE COURT: Received.

9 (Defense Exhibit No. 5 was admitted.)

10 MR. RUTCHOW: Your Honor, I'm handing up
11 what's been marked as Defendant's Exhibit 4.

12 BY MR. RUTCHOW:

13 Q. Mr. Beyer, earlier in your direct there
14 was some testimony about you sending some confidential
15 Vestagen information to -- and I believe you said Lisa
16 Dolan, but it's, in fact, Susan Dolan at Colorado
17 Children's; is that right?

18 A. If I did, I apologize. Yes, it's Susan
19 Dolan.

20 Q. There's a Lisa Dolan that works for
21 somebody else in the medical field; correct?

22 A. There is, yes. Yes.

23 Q. All right. And do you recognize this as
24 the email that you attached a bunch of literature to
25 and sent to her?

1 A. Correct.

2 Q. Did you read any of the stuff that you
3 were attaching and sending to her?

4 A. Yes. So there was a folder of clinical
5 literature, and I -- I read through some of them,
6 certainly, but our marketing person kept putting files
7 into this one folder. And so the one in question, it
8 was attached is called Vestagen Literature Library,
9 not Confidential Vestagen Literature Library, just
10 Vestagen Literature Library. And I attached that on
11 the email.

12 Q. Did you read it before you attached it
13 and sent it?

14 A. No.

15 Q. Is that a no?

16 A. That's correct, that's a no.

17 MR. RUTCHOW: Your Honor, we would move
18 to admit Exhibit 4.

19 THE COURT: Any objection?

20 MR. ZENNER: No, Your Honor.

21 THE COURT: D4 is admitted.

22 (Defense Exhibit No. 4 was admitted.)

23 BY MR. RUTCHOW:

24 Q. You said you had a side bar discussion
25 with Mr. Lessem about confidential information. Why

1 did you have that side bar with him?

2 A. I recall -- because I think it was
3 brought to my attention after I sent it to him, and
4 then we discussed ways in which to prevent that from
5 happening in the future. In other words, create
6 another folder that has confidential information so
7 the reps don't duplicate that.

8 Q. So I understand what was brought to your
9 attention, the fact that the document that you
10 attached but hadn't read was, in fact, confidential
11 document was brought to your attention that you
12 shouldn't do that anymore?

13 A. No. It was --

14 Q. What was brought to your attention, then?

15 A. It was so -- it was trivial at the time.

16 Q. Trivial to whom?

17 A. To both Marc and I, right.

18 Q. And how did you know it was trivial to
19 Marc?

20 A. Because this was -- even though it was
21 marked confidential, it was not truly confidential
22 information. It was here's the literature and here's
23 how to articulate it to a customer.

24 MR. RUTCHOW: Your Honor, this is a
25 document that was marked as Exhibit 4b on defendant's

1 exhibit list.

2 BY MR. RUTCHOW:

3 Q. And, Mr. Beyer, would you agree with me
4 that this Vestagen Reference Library summary is the
5 Vestagen Literature Library you were just talking
6 about?

7 A. Yes. This is where all the various
8 literature related to the industry of antimicrobial,
9 food repellent scrubs.

10 Q. What you're talking about is what's at
11 the bottom of each of the -- what appear to be
12 PowerPoint slides in red are instructions to a sales
13 rep as to how and when to use that document when
14 meeting with a customer; is that right?

15 A. Correct.

16 Q. And make sure I understand your
17 testimony, you're saying that that's not really
18 confidential?

19 A. It's marked confidential, for sure, but
20 at the time it was, hey, we got to prohibit this from
21 happening in the future. It was a -- clearly it was
22 an error. And the solution was take anything that's
23 deemed confidential and put it in a folder by itself
24 as opposed to in with all the other reference
25 literature we had access to.

1 THE COURT: How about just renaming the
2 document? What does that mean, reference library
3 summary? Sounds pretty milquetoast to me and doesn't
4 say confidential on the front -- well, I guess, it
5 does right there on the left side.

6 BY MR. RUTCHOW:

7 Q. And in the future did you send out any
8 information that had been marked confidential?

9 A. No. Not that I'm aware of.

10 THE COURT: Are you moving that in
11 evidence?

12 MR. RUTCHOW: Yes, Your Honor.

13 THE COURT: Any objection to 4b?

14 MR. ZENNER: No, Your Honor.

15 THE COURT: Received.

16 (Defense Exhibit No. 4b was admitted.)

17 BY MR. RUTCHOW:

18 Q. Mr. Beyer, I want to go back and ask you
19 some questions about some of the exhibits that
20 Mr. Zenner had asked you about. First I want to talk
21 to you about Exhibit P5. So Plaintiff's 5, which is
22 the May 9, 2016, email from Mr. Pruna to various
23 individuals, including yourself, that attaches a sales
24 by salesperson year to date, January to May 9, 2016,
25 do you see that exhibit?

1 A. Yes.

2 Q. I believe you testified that at this
3 point in time -- make sure I understand. In May of
4 2016 who was -- was Northwell yet an institutional
5 customer?

6 A. They had started to purchase.

7 Q. At that point in time was Baptist still
8 the primary institutional customer?

9 A. That was certainly the focus.

10 Q. And can you tell by looking at this
11 Exhibit 5 which of these sales by these various sales
12 reps were to institutional customers and which ones
13 were, as you said before, the onesies and the twosies?

14 A. Can I tell from this document here?

15 Q. Yes.

16 A. I would -- I would think that the type
17 that says invoice would lead me to believe those are
18 purchased from the hospital as opposed to others that
19 say -- I think I saw something -- they're all
20 invoices, so that doesn't make a lot of sense. No, I
21 can't tell.

22 Q. Okay. And I think you testified that the
23 2016 revenue goal for Vestagen was \$2.2 million?

24 A. Yes.

25 Q. So if we go and we look at -- I think

1 it's -- make sure I get the right one. Exhibit 11.

2 This is -- appears to be a similar-type report sent by
3 Mr. Pruna on September 19, 2016, for sales January to
4 September 19, 2016. Is that right?

5 A. Yes.

6 Q. Okay. And on this one it does list the
7 customer. Appears to me, the majority of those are
8 either North Shore or Baptist. My question is, if I
9 go all the way to the back and I've got total revenue,
10 that bottom number, that's a little over a million
11 dollars; is that right? So that would be a little
12 over a million dollars in revenue for January through
13 September 19, 2016; correct? If that's what the date
14 of this document is?

15 A. Correct.

16 Q. Okay. So you're into the third quarter
17 and you're still -- and you're less than halfway to
18 your goal for revenue for the year. Would you
19 consider that to be on target to meet the revenue goal
20 for the year?

21 A. Absolutely.

22 Q. And why would you say that?

23 A. We're just starting the implementation of
24 some of these customers. It's -- if you've got a
25 customer -- it's not like buying a widget. You have

1 to deploy and implement the scrubs, so it takes time.
2 It's one hospital at a time. It's -- et cetera. So
3 it takes a -- takes a long time.

4 Q. You had talked with Mr. Zenner about some
5 PowerPoint slides. I believe they are Exhibit 9. I
6 believe you said that Mr. Bold approved these slides;
7 is that right?

8 A. Yes, they were presented to the board.

9 Q. Did Mr. Bold have anything else to do
10 with putting together the slides besides approving
11 them?

12 A. He was -- he compiled it from all the
13 department heads, so, in other words, marketing,
14 sales, finance would complete our slide, sent it to
15 him. He would compile, review and approve.

16 Q. When you say compile and review, would he
17 make changes to the slides before he approved them?

18 A. I can't speak to that.

19 Q. Well, did he ever ask you to revise
20 slides that you had presented to him because he needed
21 them to be changed in some way?

22 A. He did.

23 Q. So it went beyond just approving them.
24 He had some involvement in what -- what the slides
25 would look like before he approved them?

1 A. No, just the last couple days before he
2 terminated me, he was hyperfocused on those slides,
3 but not prior to that.

4 Q. Okay. So prior to September -- late
5 September he was not focused on any of the slides,
6 what the slides would look like that you were
7 presenting to the board. Is that your testimony?

8 A. It's a -- it's a vague question. I don't
9 recall him making any changes to my slides. I don't
10 know if he did that prior to the board. I don't
11 recall.

12 Q. Okay. And if you would look at
13 exhibit -- Plaintiff's Exhibit 15. And it appears, if
14 you go to the last page of that exhibit, that this
15 email string starts with an email from you to Bill
16 Bold saying that you had modified the slides; is that
17 right?

18 A. Yes.

19 Q. So was this a situation in which Mr. Bold
20 had made changes or asked you to make changes to the
21 slides he was going to present to the board?

22 A. Not that I recall. It could have just
23 been a conversation about sales activity that may have
24 occurred over the last couple days.

25 MR. RUTCHOW: Your Honor, I'm handing up

1 what was marked as Defendant's Exhibit 20.

2 BY MR. RUTCHOW:

3 Q. Mr. Beyer, I would direct your attention
4 on Exhibit 20 to the bottom of first page and then to
5 the second page which is an email from Bill Bold to
6 you dated Tuesday, September 20, 2016, subject: Board
7 slides. And then the second page he's raising five
8 comments about those slides.

9 That's a little more than just some
10 questions about sales over the last couple days, isn't
11 it?

12 A. This is his opinion.

13 Q. And, in fact, isn't this the email you
14 were responding to when you sent him the slides that
15 you had revised?

16 A. Could be.

17 MR. RUTCHOW: Your Honor, I'm going to
18 hold admitting Exhibit 20 into evidence until Mr. Bold
19 testifies.

20 THE COURT: Okay.

21 MR. RUTCHOW: Because I don't think
22 Mr. Beyer was party to the first email in that chain,
23 so.

24 THE COURT: Well, the first email looks
25 like it's from Bold to Mr. Beyer.

1 MR. RUTCHOW: Right. And then the
2 subsequent email I don't think Mr. Beyer was copied
3 on.

4 THE COURT: Oh, okay.

5 MR. RUTCHOW: So I'm just going to wait
6 for the person who was on all of them to be able to --

7 THE COURT: Okay, that's fine.

8 MR. ZENNER: I'm not going to object to
9 it when he does.

10 MR. RUTCHOW: Okay, then that's fine,
11 Your Honor. I'll go ahead and admit it now.

12 THE COURT: Okay. We'll go ahead and --
13 this is D20 is received.

14 MR. RUTCHOW: Yes.

15 THE COURT: Okay.

16 (Defense Exhibit No. 20 was admitted.)

17 MR. RUTCHOW: If I could have just a
18 minute, Your Honor.

19 THE COURT: Yes.

20 (Pause in proceedings.)

21 MR. RUTCHOW: Your Honor, that's all I
22 have at this time.

23 THE COURT: Any redirect?

24 MR. ZENNER: No, Your Honor.

25 THE COURT: Okay. We'll take a lunch

1 break. How about if we are back by 1:15? That's 50
2 minutes for lunch.

3 MR. RUTCHOW: We can make that work.

4 THE COURT: Okay, 50 minutes for lunch.
5 We're in recess.

6 (Whereupon, a break was taken from
7 12:25 p.m. to 1:19 p.m.)

8 THE COURT: All right. Next witness, for
9 the plaintiff.

10 MR. ZENNER: Call Tony Pruna.

11 **TONY PRUNA**

12 called as a witness, after having been first duly
13 sworn, testified as follows:

14 **DIRECT EXAMINATION**

15 BY MR. ZENNER:

16 Q. Mr. Pruna, you are the former CFO of
17 Vestagen; is that right?

18 A. That is correct.

19 Q. Now, let me talk a little bit about your
20 educational background. Tell me what that is.

21 A. I have a bachelor's degree in accounting
22 from the University of Texas, an MBA from Wake Forest
23 University, and I'm a certified public accountant in
24 the state of Florida.

25 Q. During what time period did you work for

1 Vestagen?

2 A. From 2012 to 2017. Sorry, 2014 to 2017.
3 Three years.

4 Q. Did you have a job title? What was your
5 title there?

6 A. At Vestagen?

7 Q. Yes.

8 A. Director of finance was my corporate
9 title.

10 Q. Okay. What were your --

11 A. And my acting title was CFO.

12 Q. What were your job responsibilities?

13 A. Pretty much oversee all the financial
14 activities of the company, the Human Resources
15 activities, and the information technology activities.

16 Q. So finances, Human Resources --

17 A. Human Resources and information
18 technology.

19 Q. What was involved in the Human Resources
20 aspect of it?

21 A. The basic compliance work that comes
22 from, you know, hiring employees and making sure that
23 we were law-abiding and that personal records were on
24 board, payroll was done and properly set up, all those
25 things, yeah.

1 Q. Did you maintain personnel files?

2 A. I did.

3 Q. Did you have any part in disciplining
4 employees as the HR person?

5 A. From a responsibility standpoint I did.
6 Doesn't mean that I was involved all the time, but I
7 was, yeah, responsible for it.

8 Q. When did you leave Vestagen?

9 A. Late May of this year.

10 Q. Why did you leave?

11 A. I found -- or I got another opportunity
12 as a VP of finance with a company called Everything
13 But Water.

14 Q. Did you leave on good terms, bad terms?
15 I mean, was there any animosity? You left
16 voluntarily?

17 A. Not that I'm -- no, I think I left on
18 good terms.

19 Q. Okay. You left voluntarily?

20 A. Yes.

21 Q. Okay. And you gave them some notice
22 before you left?

23 A. Yes.

24 Q. As the director of finance, are you
25 familiar with Vestagen's revenues or sales revenues?

1 A. Yes.

2 Q. Let's talk about 2014. Do you know what
3 their annual revenues were that year, approximately?
4 I know it's not going to be --

5 A. I can't remember the exact number, but it
6 was about \$2 million.

7 Q. Okay. And what about 2015?

8 A. \$790,000, something like that.

9 Q. So it was a significant drop in 2015?

10 A. From 2014, yes.

11 Q. Okay. And Mr. Beyer came to work the
12 beginning of 2016 and worked through two-thirds of
13 September of that year. Do you know what the 2016
14 revenues were?

15 A. About \$2.2 million.

16 Q. What was the goal? Were there revenue
17 goals for that year?

18 A. Yes.

19 Q. How close to it was that?

20 A. 98 percent on goal, something like that.

21 Q. Okay. And then 2017, I understand it's
22 not complete and you weren't there for all of it, but
23 at the time you left five months into 2017, what did
24 the revenues look like?

25 A. Half a million dollars or so.

1 Q. Were they down significantly from the
2 prior year?

3 A. Yes.

4 Q. Are you familiar with Mr. Beyer's
5 employment agreement?

6 A. Yes.

7 Q. If you will look to Exhibit 2,
8 Plaintiff's Exhibit 2. Exhibit 2 has been entered as
9 the employment agreement for Mr. Beyer. Have you ever
10 seen that before, I take it?

11 A. Yes.

12 Q. Did you have any role in drafting it?

13 A. My role was limited to maybe circulating
14 the draft documents of this offer letter to different
15 parties within the company.

16 Q. Okay. So you maybe didn't write it, but
17 you were -- you were viewing it as drafts were being
18 circulated?

19 A. That is correct.

20 Q. Okay. And are you familiar with the
21 definitions section of the agreement?

22 A. Yes.

23 Q. Okay. What is required under that cause
24 definition section to affect a termination for cause?
25 What are the steps that need to be taken?

1 MR. RUTCHOW: Your Honor, I'm going to
2 object to the extent that he's offering any parol
3 evidence beyond the actual words of the documents.

4 THE COURT: It does sound like parol
5 evidence interpretation. That's what the Court's
6 supposed to do.

7 MR. ZENNER: Okay.

8 BY MR. ZENNER:

9 Q. When you were working at Vestagen, did
10 Mr. Bolds ever speak to you -- let me back up. There
11 was a period of time that you were responsible for
12 taking minutes and notes for board of directors
13 meetings; is that right?

14 A. That's correct.

15 Q. And during what time period was that?

16 A. From the time I joined the company in
17 January of 2014 through the summer of 2016. I can't
18 remember exactly when it ended. And we started using
19 the corporate attorneys to take the minutes to the
20 meetings of the board of directors.

21 Q. Okay. So through probably, what, June or
22 so of 2016?

23 A. It was the summer of 2016.

24 Q. Okay.

25 A. June or July.

1 Q. So during that time period, 2016, were
2 there ever any discussions that you recall during the
3 board of director meetings about Mr. Beyer's lack of
4 performance?

5 A. I don't remember, no. I don't think so.

6 Q. Were there any notes that you took or
7 discussions that you recall hearing that had to do
8 with terminating Mr. Beyer for cause?

9 A. Not that I can recall. No.

10 Q. Were there any discussions or notes that
11 you took during these meetings where -- the mention of
12 giving Mr. Beyers ten days' notice of a for cause
13 termination? Was anything like that ever spoken of?

14 A. No.

15 Q. Did you ever have any conversations with
16 Bill Bolds regarding the performance of Mr. Beyers?

17 A. Yes.

18 Q. Tell me how many conversations you had
19 that you recall and approximately when they occurred.

20 A. I recall just a couple of conversations
21 where Mr. Bold expressed that he wasn't happy with
22 Mr. Beyer. And that was about it.

23 Q. And when --

24 A. When, exactly? July, August of 2016
25 sometime.

1 Q. Did he mention terminating Mr. Beyer?

2 A. Not that I remember.

3 Q. Did he talk to you at all about giving
4 Mr. Beyer notice that they have cause for termination?

5 A. No.

6 Q. Did he ever document anywhere that he had
7 given Mr. Beyers notice of a for cause termination for
8 you to put in his personnel file?

9 A. No. Otherwise I would have put it in his
10 personnel file. I never came across any
11 documentation.

12 Q. Now for my next question. Was there any
13 documentation of any notice of a for cause termination
14 and ten days' opportunity to cure as being given to
15 Mr. Beyer?

16 A. No, sir.

17 Q. When is the first time that you even knew
18 that Mr. Beyers had been terminated?

19 A. That day he was terminated.

20 Q. Was it a surprise to you?

21 A. Yes. It was a little bit of a surprise.

22 Q. Let me ask you this: How would you
23 describe the temperament of Mr. Bold?

24 A. How would I describe his temperament?

25 Q. Yes. Yes.

1 A. I don't know, just a regular guy, I
2 guess. I'm not sure --

3 Q. Was he pretty steady across the board or
4 was it sort of up and down?

5 A. Yeah, Bill can go up and down sometimes,
6 sure.

7 Q. So you first learned as the CFO and the
8 person who's responsible for Human Resources at
9 Vestagen that Mr. Beyer was being terminated the day
10 it happened?

11 A. Yes.

12 Q. Tell me how you even learned that it
13 happened.

14 A. Mr. Bold informed me that Mr. Beyer was
15 terminated following their phone conversation,
16 whenever that happened.

17 Q. Did he tell you why he was terminated?

18 A. For performance.

19 Q. Did he specify anything in particular?

20 A. No.

21 Q. Did you have any discussion about
22 Mr. Beyer's severance payments under the terms of his
23 agreement?

24 A. Yes.

25 Q. What were those?

1 MR. RUTCHOW: Your Honor, again, I'm not
2 sure where we're going, but in the time frame after
3 Mr. Beyer was terminated, Mr. Pruna was in a position,
4 an executive-level position. And I know from having
5 seen correspondence before I got involved that there
6 was communications with attorneys regarding severance
7 issues.

8 So to the extent that Mr. Pruna is going
9 to talk about things that during a time frame when he
10 would have been an executive of the company, of the
11 defendant, there would be attorney/client privilege
12 attaching to these communications when he -- during a
13 time when he was an agent.

14 THE COURT: He can certainly tell us
15 anything that Mr. Bold said.

16 MR. RUTCHOW: I agree, Your Honor.

17 THE COURT: I think that's all he's
18 asking for.

19 MR. ZENNER: I'm really limited to a day
20 or two after this. There wouldn't have been
21 litigation ongoing yet.

22 BY MR. ZENNER:

23 Q. Did you have a discussion with Mr. Bold
24 regarding the severance payment?

25 A. Yes.

1 Q. And what was that discussion?

2 A. When we discussed the fact that Mr. Beyer
3 was terminated, I -- I brought up the severance. And
4 Mr. Bold instructed me to hold back on that, because
5 he believed that the termination was for cause. And
6 that's where we left it. Then we proceeded to cut off
7 the health insurance, and that was it. That's all we
8 talked about.

9 Q. Did you tell him whether or not you
10 thought the severance should be paid?

11 A. I remember saying, yes, that it was -- in
12 my professional opinion, it would have been better to
13 pay Mr. Beyer the severance on his employment letter.
14 I did say that.

15 Q. Based upon what you know about the
16 employment agreement and the steps that have to be
17 taken for cause as the CFO and the person in charge of
18 HR at Vestagen, do you think those steps were taken?

19 A. No.

20 MR. ZENNER: Your Honor, I'm going to ask
21 him about a couple of exhibits that were on the
22 defendant's exhibit list, D14 and D15.

23 THE COURT: That's fine.

24 MR. ZENNER: I'm not going to enter them.
25 Actually, those are two different exhibits.

1 THE COURT: These are -- I don't see a
2 number anyway.

3 BY MR. ZENNER:

4 Q. I'm just going to ask you this. Those
5 were identified on the exhibit list of the defendant
6 as some memos regarding Gene Deutscher. Have you ever
7 seen those before?

8 A. No.

9 Q. At the time you left, were you familiar
10 with the contents of Mr. Beyer's personnel file?

11 A. Yes, I was.

12 Q. Were those documents included in his
13 personnel file?

14 A. No.

15 Q. Did you ever put any written
16 documentation in any -- in Mr. Beyer's personnel file
17 of a disciplinary action?

18 A. No.

19 Q. Was there anything in his file that
20 indicated any discipline whatsoever?

21 A. No.

22 MR. ZENNER: Okay. I'm going to mark
23 those for ID purposes.

24 THE COURT: These are D14 and D15; right?

25 MR. ZENNER: Yes.

1 BY MR. ZENNER:

2 Q. Does the employee manual -- you're
3 familiar with that; right?

4 A. Yes, sir.

5 Q. That provided for the opportunity to
6 engage in a performance improvement plan?

7 A. Yes.

8 Q. Okay. Was Mr. Beyer ever put on a
9 performance improvement plan?

10 A. Not formally, which will be what I will
11 be concerned with as VP of finance or HR.

12 Q. I mean, there's a procedure in place to
13 put someone on a formal performance improvement plan;
14 right?

15 A. That is correct.

16 Q. And that was never done in this case for
17 Mr. Beyer?

18 A. No, sir.

19 MR. ZENNER: I believe that's all I have.
20 Thank you.

21 THE COURT: Cross?

22 **CROSS-EXAMINATION**

23 BY MR. RUTCHOW:

24 Q. Mr. Pruna, who did you report to?

25 A. I reported to Mr. Bill Bold.

1 Q. And who did Mr. Beyer report to?

2 A. Bill Bold as well.

3 Q. So he was both of yours bosses?

4 A. Yes, sir.

5 Q. You just said that Mr. Beyer was never
6 formally put on a performance improvement plan. Was
7 he ever informally put on a performance improvement
8 plan that you're aware of?

9 A. No, not that I'm aware of.

10 Q. Okay. You said that sometime in July or
11 August you had a couple of conversations with Mr. Bold
12 in which he expressed to you that he was not happy
13 with Mr. Beyer; is that right?

14 A. Yes.

15 Q. Did he tell you why he was not happy with
16 Mr. Beyer?

17 A. Sales performance.

18 Q. Anything else?

19 A. That I remember, maybe some disagreements
20 with some of his salespeople.

21 Q. Did he give you any -- do you recall
22 anything that he told you about what those
23 disagreements were?

24 A. Yeah, I mean, I don't recall the specific
25 verbiage of the conversation, but -- but at the time I

1 knew that there were a couple of sales reps, for lack
2 of a better term, that were not happy with Mr. Beyer.
3 And they had expressed unhappiness to -- I'm assuming
4 to Mr. Bold, and maybe some other people, I don't
5 know.

6 Q. Who were those sales reps that were not
7 happy with Mr. Beyer?

8 MR. ZENNER: Object to the hearsay,
9 Your Honor.

10 THE COURT: Well, this is something that
11 Mr. Bold told you, that there were two sales reps that
12 were not happy?

13 THE WITNESS: Yeah.

14 THE COURT: Overruled.

15 THE WITNESS: That I can recall, yeah.

16 THE COURT: Overruled.

17 BY MR. RUTCHOW:

18 Q. Who were the two sales reps?

19 A. Brain Crawford.

20 Q. Okay.

21 A. And Gene Deutscher. I can never say
22 his --

23 Q. Deutscher?

24 A. Right. I can never say his name right.

25 Q. I understand. Do you have any

1 understanding as to why these two were not happy with
2 Mr. Bold?

3 THE COURT: Now, are we asking for
4 hearsay at this point? Anything that Mr. Bold told
5 you is okay, but anything else is not okay.

6 THE WITNESS: Well, based on what
7 Mr. Bold told me, it sounded to me like
8 personality-type conflicts.

9 MR. ZENNER: Your Honor, I think that
10 anything that Mr. Bold is telling him, he had to have
11 gotten from Crawford or Deutscher.

12 THE COURT: True. We've got two layers
13 of hearsay here.

14 MR. RUTCHOW: So then, Your Honor, I'm
15 done with that.

16 THE COURT: Okay, move on.
17 BY MR. RUTCHOW:

18 Q. I believe you earlier testified, just so
19 I'm clear, that your involvement with Mr. Beyer's
20 employment agreement or the drafting of that agreement
21 was limited to circulating the various drafts among
22 the people involved; is that right?

23 A. That is correct.

24 Q. Do you know who signed the employment
25 agreement for Vestagen?

1 A. Dale Pfost, who was acting CEO at the
2 time, and he's the executive chairman of the company.

3 Q. Okay. Did you ever have any concerns
4 with Mr. Beyer's performance?

5 A. Not any more than I had any other -- you
6 know, any concerns with the company's sales
7 performance as a whole.

8 Q. Did you ever express any frustration to
9 Mr. Bold about Mr. Beyer's inability to get his
10 expense reports in in a timely manner?

11 A. Yeah.

12 Q. Was that unusual among the sales reps or
13 was he about the same as everybody else?

14 A. About the same as everybody else.

15 MR. RUTCHOW: Your Honor, that's all I
16 have.

17 THE COURT: Any redirect?

18 **REDIRECT EXAMINATION**

19 BY MR. ZENNER:

20 Q. Did Mr. Bolds ever talk about firing Gene
21 Deutscher?

22 A. Yes, we discussed it a couple of times.

23 Q. Did he ever talk about firing Brain
24 Crawford?

25 A. Yes.

1 MR. ZENNER: That's all.

2 THE COURT: Anything else?

3 MR. RUTCHOW: Not from the defendant,
4 Your Honor.

5 THE COURT: All right. You may step
6 down. Thank you.

7 *****WITNESS EXCUSED*****

8 THE COURT: Any other proof?

9 MR. ZENNER: That's it from the
10 plaintiff.

11 THE COURT: Okay, plaintiff rests.

12
13 (Plaintiff rests.)

14
15 THE COURT: Okay. Let's hear the defense
16 proof.

17 MR. RUTCHOW: Your Honor, we would call
18 Bill Bold.

19 THE COURT: Okay. Bill Bold.

20 **BILL BOLD**

21 called as a witness, after having been first duly
22 sworn, testified as follows:

23 **DIRECT EXAMINATION**

24 BY MR. RUTCHOW:

25 Q. We used a lot of the same exhibits. I'm

1 just making sure I don't double up.

2 Good afternoon, Mr. Bold.

3 A. Good afternoon.

4 Q. Could you give your full name for the
5 record.

6 A. William Mark Bold, B-o-l-d.

7 Q. And by whom are you presently employed?

8 A. Vestagen Protective Technologies.

9 Q. And what's your job title?

10 A. CEO. Chief executive officer.

11 Q. How long have you held that position?

12 A. Since January 4, 2016 --

13 Q. Okay. Give me a brief summary of your
14 educational background and your work history before
15 you got to Vestagen.

16 A. Sure. I have a four-year degree in
17 marketing from West Chester University outside of
18 Philadelphia. I started working for C.R. Bard in the
19 mid '80s as a sales rep in New York City in the
20 operating room. I worked my way up to vice-president
21 of sales for the Bard Urological Group in the mid
22 '90s.

23 I then left and helped start the
24 e-commerce company for Premier in the late '90s. We
25 were acquired by medibuy.com. I then left and in 2001

1 helped start another company called Venetec
2 International. Grew that organization for four years.
3 Sold that company to C.R. Bard in 2006.

4 I then started another company called
5 Access Scientific as president and CEO in 2008. Sold
6 that company to Empath Health in 2012. And then
7 started another company called Vascular Pathways in
8 2012 and sold that company back to C.R. Bard in 2015.

9 Q. Okay. The Premier that you just
10 mentioned that you had started the e-commerce
11 division, is that the same Premier that was talked
12 about earlier today that is a group purchasing
13 organization or GPO that Vestagen at some point had an
14 agreement with?

15 A. Correct.

16 Q. Okay. Tell me about the process of you
17 becoming employed by Vestagen.

18 A. After I sold Vascular Pathways in July of
19 2015, I took a few months off. I walked the Camino de
20 Santiago across 500 miles in Spain. And during that
21 time period I received several calls from Tom Callaway
22 who is a recruiter for Health Quest. And took a call
23 from Spain and agreed to meet with Tom and the board
24 when I got back. October 8 is when I returned, but I
25 met with them probably a week later.

1 Q. Okay. And was Mr. Beyer being recruited
2 in the same time period as you were?

3 A. He was.

4 Q. And you were being recruited for what
5 position?

6 A. CEO.

7 Q. And what position was Mr. Beyer being
8 recruited for?

9 A. VP of sales.

10 Q. Tell me what, if any, involvement you had
11 in the negotiation of the employment agreement between
12 Mr. Beyer and Vestagen.

13 A. So I had the opportunity to speak with
14 Jim several times before we had the opportunity to
15 meet. We met sometime in early November. At that
16 point we had a good conversation, and I thought this
17 was a solid guy that I would like to work with and
18 bring on board.

19 I asked him about his severance
20 agreement, and he didn't have one. I asked him about
21 antidilution as it relates to options. He didn't know
22 what that meant. I asked him about accelerated
23 vesting as it relates to options, if, in fact, the
24 company was purchased. He didn't know what that
25 meant.

1 I said, well, Jim, let me help you.
2 We're going to be a team here. Let's get together and
3 I'll help -- I'll help suggest to the board that you
4 have -- you're on par with me in terms of the benefits
5 that you're going to get.

6 And basically at that point the board
7 agreed to include certain language in the agreement
8 based on my request. But I was not employed at the
9 time that was recommended to Dale Pfof and the board,
10 which they accepted, and then drafted the employment
11 agreement.

12 I didn't -- I didn't sign my agreement or
13 I didn't accept the position until Jim accepted the
14 position himself. So that I was guaranteed that he
15 got what he deserved or what he needed.

16 Q. So you were not -- make sure I
17 understand. Were you representing Vestagen in these
18 negotiations with Mr. Beyer?

19 A. No, I was representing Jim Beyer.

20 Q. And the severance language, the
21 antidilution language and the acceleration on vesting
22 of options language, make sure I understand, you have
23 the same language in your agreement?

24 A. I do. Except I have a longer period of
25 severance, but, yes, I do.

1 Q. Okay. Who did Mr. Beyer report to once
2 you were both employed?

3 A. To me.

4 Q. Were you a member of the board of
5 directors during Mr. Beyer's employment?

6 A. I was.

7 Q. Did you have discussions -- who were the
8 other board members while you were -- while Mr. Beyer
9 was employed?

10 A. Ben Favret, Dale Pfof, Randy Scott,
11 David Nash and Jim Karities (phonetic).

12 Q. Did you have discussions with any of
13 these other board members regarding Mr. Beyer or his
14 performance while Mr. Beyer was employed?

15 A. I did. Usually outside of the board
16 meetings where we would have informal conversations,
17 one-on-one conversations or just me.

18 MR. ZENNER: Objection, Your Honor,
19 hearsay. He's talking about things that he told other
20 board members.

21 MR. RUTCHOW: I'm just asking if he had
22 the conversations, not the substance of those
23 conversations, Your Honor.

24 THE COURT: Okay.

25 THE WITNESS: I did.

1 THE COURT: All right.

2 BY MR. RUTCHOW:

3 Q. Who made the decision to terminate
4 Mr. Beyer?

5 A. I did.

6 Q. Did you run that by anybody before you
7 did that?

8 A. I did.

9 Q. Who did you run it by?

10 A. Dale Pfof and Randy Scott.

11 Q. These were two board members?

12 A. Correct. They were our lead investors.

13 Q. And why did you terminate Mr. Beyer?

14 A. Several reasons. Lack of sales
15 performance, No. 1. No. 2, he had very much a
16 confrontational relationship with I'd say at least
17 half of the employees in the company and was creating
18 a real culture of mistrust and dissatisfaction.

19 Mainly -- mainly due to his inability to
20 understand the sales executive's responsibilities and
21 put in place methods, protocols and methodologies in
22 order to run a sales organization effectively.

23 Q. Okay. Did you have any discussions with
24 Mr. Beyer about these problems you've just discussed
25 with his inability to fill the sales executive role?

1 A. At least every two weeks.

2 Q. Why would you say every two weeks?

3 A. Because there were different issues that
4 would surround Jim as it relates to personnel or
5 account feedback, customer feedback, lack of progress,
6 my need for information that never was provided, that
7 I always had to go back to Jim and say, Jim, do you
8 remember about this. You can't say this to these
9 people. You need to -- you know, you need to conduct
10 yourself at a much higher level.

11 Q. All right. There was -- you've been in
12 the courtroom throughout the trial; correct?

13 A. Pardon? Yes, yes.

14 Q. Do you recall some testimony from
15 Mr. Beyer in which he testified that the two primary
16 institutional customers during his employment were
17 Baptist Health Systems and Northwell?

18 A. Correct.

19 Q. Okay. And is it correct that Baptist was
20 a customer of Vestagen before Mr. Beyer was hired;
21 correct?

22 A. That resulted in the \$2 million sales in
23 2014, yes.

24 Q. That Mr. Pruna just testified to?

25 A. Mr. Pruna just talked about, yes.

1 Q. Gotcha, okay. Tell me what you know
2 about the process for Northwell becoming a customer of
3 the company.

4 A. Sure. So Brain Crawford worked on
5 Northwell for I'd say a year and a half. He made some
6 progress and was getting to a point where some
7 decisions were going to be made. He did have an
8 opportunity to meet with Kerri Scanlon. Kerri is the
9 chief nursing officer for North Shore.

10 He conducted that meeting. He brought
11 Jim along with him because Jim was still learning in
12 the process and -- I'd say in the February time
13 period. At that point they were still determining
14 which way to go in terms of what company to utilize.

15 And Brain said -- came back to me and
16 said, the meeting went well. Jim was a little bit
17 more aggressive than I would expect --

18 MR. ZENNER: Objection, hearsay.

19 THE COURT: Excuse me?

20 MR. ZENNER: Objection, hearsay.

21 THE COURT: Sounds like hearsay to me.

22 MR. RUTCHOW: Well, Your Honor, I think
23 that -- I mean, I can -- can match it up. To me it
24 would be an exception to the hearsay rule because it's
25 not going to the truth of the matter asserted.

1 THE COURT: It is going to the truth of
2 the matter asserted. You want me to believe it. You
3 want me to believe he was too aggressive. That sounds
4 like you want me to -- it's going to the truth.

5 MR. RUTCHOW: It goes to Mr. Bold's state
6 of mind and to the information that was reported to
7 him and the actions he took as a result of that
8 information being reported to him.

9 No different than if an employer were to
10 terminate an employee for sexual harassment after that
11 sexual harassment was reported to them, whether it was
12 true or not. If that was the good -- basis of his
13 good-faith belief for taking a subsequent action, that
14 would be an exception to the hearsay rule.

15 THE COURT: Sounds like a good argument,
16 Mr. Zenner.

17 MR. ZENNER: I think Your Honor nailed it
18 the first time. The reason he's offering this
19 testimony is because he wants the Court to believe
20 that Mr. --

21 THE COURT: Well, it's hearsay because
22 it's being offered for the truth of the matter
23 asserted. But it's also being offered as notice to
24 him and his state of mind for terminating the
25 plaintiff. So it's an exception to the hearsay rule.

1 MR. ZENNER: I think the proper way would
2 be to call Mr. Crawford in and say, here's what I told
3 him.

4 THE COURT: Overruled. Go ahead.

5 BY MR. RUTCHOW:

6 Q. You were telling me about the process --
7 my question was the process by which Northwell became
8 a customer.

9 A. Right. So that meeting took place and
10 Kerri is a significant individual within the Northwell
11 system, but she wasn't the final decision-maker.
12 There was a -- a very formidable lady by the name of
13 Phyllis McCready, who was the chief supply chain
14 officer.

15 And at the time Jim always talked about
16 the relationships that he had and how he knows
17 everybody in the industry and he knows Phyllis very,
18 very well. I said, great, go. Get an appointment,
19 sit down, let's talk with her, see what we need to do
20 in order to get the business. He tried for two or
21 three or four weeks and never got the appointment.

22 I've known Phyllis for 25 years. I made
23 a phone call, and we were sitting in front of each
24 other a week later. She didn't know who Jim was and
25 never took the meeting because she wasn't aware of him

1 even being a part of the organization.

2 So Phyllis and I sat down. Brain
3 Crawford was in the room, John Silva was in the room.
4 And Donnie -- I can't remember -- John's boss as well.
5 We talked about the initial order for Northwell, which
6 was for the patient care associates. It was \$150,000
7 order for the thousand employees --

8 MR. ZENNER: Objection, hearsay,
9 Your Honor. Again, we're just talking about --

10 THE COURT: Overruled.

11 THE WITNESS: We talked about the first
12 order that was to be placed for the patient care
13 associates. It was \$150,000 order. They had the PO
14 cut for 125,000, and they said to me, can you give us
15 the deal for 125,000 and we'll pay the \$30,000 off as
16 we continue to do business with you.

17 So we drafted an agreement over the next
18 week or so. Phyllis signed it, I signed it, and we
19 ended up getting the business at Northwell. And
20 because of that relationship that I had with her, I
21 stayed very much involved.

22 In addition to that, they were looking to
23 invest in startup companies, and they invested in
24 Vestagen as well. And that's the reason I also stayed
25 involved in the business because I was also not only

1 on the clinical side, but on the investment side as
2 well.

3 BY MR. RUTCHOW:

4 Q. So as far as you were concerned, did
5 Mr. Beyer have anything to do with you -- with
6 Vestagen obtaining business from Northwell?

7 A. Nothing.

8 I'll take it a step further --

9 THE COURT: There's no question pending.

10 THE WITNESS: Sorry, Your Honor.

11 BY MR. RUTCHOW:

12 Q. You mentioned that you had issues with
13 Mr. Beyer's ability to act in the sales executive role
14 and that you had discussed that with Mr. Beyer. Did
15 you ever put any of your concerns regarding
16 Mr. Beyer's performance in writing?

17 A. I did. I would continuously ask him to
18 improve upon the work that he provided me and give him
19 guidance, direction, and even examples of what I
20 needed him to do along the way in order for him to at
21 least, at a nominal level, play a role in that
22 position.

23 MR. RUTCHOW: Your Honor, I'm going to
24 provide the witness with a document that was marked as
25 Defendant's Exhibit 6.

1 BY MR. RUTCHOW:

2 Q. Mr. Beyer, do you recognize -- or
3 Mr. Bold, do you recognize this document?

4 A. I do.

5 Q. And the date on this document is
6 August 1, 2016; is that correct?

7 A. Correct.

8 Q. And what was the purpose of this email
9 communication with Mr. Beyer?

10 A. To notify Jim that he has had very little
11 effect on the productivity and the sales or revenue
12 being generated for the Vestagen organization. These
13 four accounts, North Shore and HCA and Kindred
14 Denver -- three accounts, I should say, were in
15 process when he got there. And there was absolutely
16 zero new business that was brought on since Jim's
17 inception with the company.

18 Q. All right. Second sentence of this email
19 that you said -- you will need to make certain next
20 week that accounts targeted under your leadership will
21 allow us -- I think you meant us, it says up -- to hit
22 our 2016 and 2017 numbers with some concrete data to
23 back it up. Just a heads up.

24 What was happening next week that he
25 would need to provide this information?

1 A. I believe there was a board meeting.

2 Q. So this was information that the board
3 was going to want from Mr. Beyer, is that what you're
4 saying?

5 A. Correct.

6 Q. And did Mr. Beyer ever provide you with
7 the concrete data regarding how that you were going to
8 hit your 2016 and '17 numbers?

9 A. He did not with any degree of confidence.

10 Q. What do you mean by that?

11 A. Basically throughout Jim's tenure I would
12 get highly inflated numbers, and he would always say,
13 hey, back of the napkin, we're going to do a million
14 dollars with this customer, and nothing ever happened.
15 Nothing ever came to fruition.

16 And that was the reason I notified him
17 that the only accounts that have closed are accounts
18 that had been under my management with North Shore,
19 HCA and Kindred Denver, and that he has not
20 contributed to what we were trying to accomplish.

21 Q. All right.

22 MR. RUTCHOW: Your Honor, we would move
23 for the admission of Exhibit 6.

24 THE COURT: Any objection?

25 MR. ZENNER: No, Your Honor.

1 THE COURT: Received.

2 (Defense Exhibit No. 6 was admitted.)

3 MR. RUTCHOW: Mr. Bold, there was an
4 exhibit of original plaintiff's exhibits and I wanted
5 to refer him to some of the plaintiff's exhibits.

6 THE COURT: Is there a notebook still --
7 the notebook that was up at the witness stand, do we
8 very that, the plaintiff's exhibits?

9 MR. ZENNER: He walked off with it.

10 BY MR. RUTCHOW:

11 Q. Mr. Bold, I want to refer you to
12 Exhibit 10, which is your email dated August 23, 2016.

13 A. Yes.

14 Q. Going back just for a second, on that
15 email you sent him on August 1, were you acting on
16 behalf of the board when you sent that email?

17 A. Yes, as I was the representation from the
18 board to the Vestagen organization.

19 Q. This email attaches a Quick Base funnel.
20 There was some questions earlier that I asked
21 Mr. Beyer about that confidence column. Did you have
22 any concerns about that confidence column?

23 A. Absolutely.

24 Q. What were they?

25 A. Well, first of all, these columns were

1 designated to be very specific, in that if an account
2 was in the discovery phase, there was a 50 percent
3 probability that that customer would close in 90 days.
4 This is a typical 90, 60, 30-day sales funnel.

5 If the customer was in the qualifying
6 stage, there's a 75 percent chance that they would
7 close in two months. And then finally the VNOW stage
8 was a 90 percent degree of confidence that they would
9 close within 30 days.

10 There was also another tab that was in
11 front of this before discovery that was called the
12 targeting phase. And there wasn't a percentage
13 associated with that because that's where they were
14 determining if the account was even worth putting into
15 the funnel process.

16 And once it was and qualified to a
17 certain degree where there's some level of confidence
18 at 50 percent, that's when it got put into discovery.

19 Q. So these -- when I'm looking at this
20 discovery phase, from Milton Bugg there's a 90 percent
21 confidence phase, should that -- is that accurate?

22 A. Of course not, no.

23 Q. That should be 50 percent?

24 A. That should be 50 percent.

25 Q. Who put together this Quick Base sales

1 funnel?

2 A. The person that actually designed it was
3 Milton Bugg.

4 Q. Okay.

5 A. Milton Bugg worked with me at a previous
6 company. We implemented Quick Base at that previous
7 company, Venetec International. He then went on to
8 manage the Quick Base program for C.R. Bard, the
9 company that we sold -- the company that we sold to.

10 And I asked Jim -- or I implored Jim for
11 months and months and months to put together some kind
12 of funnel process, which he did not do or could not
13 do. So Milton and I spoke. Milton said, hey, I have
14 great expertise with Quick Base.

15 I said, let's do it. We'll call Jim and
16 let him know and get his buy-in that we're doing it,
17 which is exactly what we did. And he was thrilled
18 that we put in place a funnel or a tracker that we can
19 potentially forecast new business.

20 Q. So putting a funnel in place, was that
21 Mr. Beyer's job responsibility?

22 A. It was.

23 Q. Did he complete that job?

24 A. He did not.

25 Q. And you and Milton Bugg did that instead?

1 A. Absolutely.

2 Q. I believe you said that that column on
3 the VNOW -- what does VNOW stand for again?

4 A. VESTEX NOW.

5 Q. And you said that that 90 percent is a
6 90 percent probability -- accounts should only be in
7 there if the forecast is that there's a 90 percent
8 probability that the account will close in 30 days; is
9 that right?

10 A. Correct.

11 Q. Okay. And this Quick Base that is
12 funneled is dated 8-23-16. Are you aware of any of
13 the accounts that are listed in the VNOW section that
14 closed within 30 days of August 23, 2016?

15 A. The only accounts that closed were the
16 Northwell accounts.

17 Q. The Northwell accounts?

18 A. Brain Crawford with the Northwell
19 accounts, correct.

20 Q. And at this point in time in August 2016,
21 Brain Crawford was reporting to you; is that right?

22 A. Correct.

23 Q. So...

24 MR. RUTCHOW: Your Honor, I'm providing
25 Defendant's Exhibit 7.

1 BY MR. RUTCHOW:

2 Q. Mr. Bold, do you recognize the document
3 that's been marked as Exhibit 7?

4 A. I do.

5 Q. What is that document?

6 A. It's an email from me to Jim discussing
7 the need for a formal sales process to support the
8 sales funnel that was devised by myself and Milton
9 Bugg, meaning how does a customer get put into the
10 targeting category.

11 Once they check off the boxes in the
12 targeting category, what are those boxes and then how
13 do they move to the discovery phase. And then when
14 they're in the discovery phase, what are the five or
15 six things that need to happen in order to move them
16 to the qualifying stage.

17 I continuously asked Jim to put those
18 metrics in place, and that never happened until I sent
19 him suggested metrics to put in place, and then
20 finally a document came back to me basically with what
21 I provided him.

22 Q. The subject of this mail says board deck.
23 Were you -- was this a request, again, for information
24 to be provided to the board?

25 A. Absolutely.

1 Q. All right. And I believe you said he
2 didn't provide you with the information that you had
3 requested in here until you had provided him with some
4 type of template or some type of document for him to
5 use as an example and then you got something back?

6 A. Correct.

7 Q. All right. And is this the first time
8 you'd asked him for this type of information?

9 A. No. I asked him since January 4 when he
10 was hired.

11 Q. All right.

12 MR. RUTCHOW: We'd move to admit
13 Exhibit 7.

14 THE COURT: Any objection?

15 MR. ZENNER: No objection.

16 THE COURT: Received.

17 MR. RUTCHOW: I think I moved for 6, but
18 if I didn't --

19 THE COURT: You did.

20 MR. RUTCHOW: Okay.

21 (Defense Exhibit No. 7 was admitted.)

22 MR. RUTCHOW: Passing to the witness
23 Defendant's Exhibit 8.

24 BY MR. RUTCHOW:

25 Q. Mr. Bold, you've been handed Exhibit 8.

1 Can you tell me what the purpose of this document was?

2 A. Yes. Jim and the sales reps that were in
3 the field, the four sales reps, had a very, very
4 difficult time understanding this relatively simple
5 sales concept and process. So I knew that Jim didn't
6 understand the tracker and, therefore, wasn't able to
7 educate the people that worked for him on how to
8 utilize the tracker or funnel.

9 So what I did was I wrote an email after
10 having many conversations with Jim about this topic, I
11 wrote an email to Jim and to the team saying, here is
12 exactly how it needs to work. Please put forth the
13 best effort to have exact detail, viable data because
14 it's what we're building the organization on and we
15 need to be able to forecast how much money we need to
16 continue running the company, based on the amount of
17 revenue that we expect to bring in.

18 Q. And this has got that -- what you
19 explained earlier about the discovery being 90 days
20 out and qualified 60 days out and the VNOW being 30
21 days out from close; is that right?

22 A. Correct.

23 Q. Okay. And going back to
24 Plaintiff's Exhibit 10, which was the August 23 email.

25 A. Yes.

1 Q. The second sentence in your email, the
2 cover email is asking the team to do a gut check to
3 ensure you still believe the numbers in the current
4 year revenue column next to your accounts are still
5 accurate. Why were you asking them to check their
6 numbers to see if they were accurate?

7 A. Because I was being held accountable by
8 the board to ensure that we had accurate data on which
9 we were making very, very important companywide
10 decisions on. And, therefore, I was holding Jim and
11 the team accountable for providing accurate data based
12 on those individuals being the commercial organization
13 representing Vestagen.

14 MR. RUTCHOW: I'd move to admit
15 Exhibit 8, Your Honor.

16 THE COURT: Any objection?

17 MR. ZENNER: No objection.

18 THE COURT: Received.

19 (Defense Exhibit No. 8 was admitted.)

20 MR. RUTCHOW: Handing up to the witness,
21 Your Honor, Defendant's Exhibit 9.

22 BY MR. RUTCHOW:

23 Q. Mr. Bold, you've been handed a document,
24 the top of it is an August 8, 2016, email. Below that
25 appears to be a copy of your August 5 email. Can you

1 tell me why you sent out this email on August 8?

2 A. Because I got inflated, inaccurate
3 information back again after I sent this email to the
4 team, which I expected Jim to manage and to police and
5 to vet in order for me to get back accurate data and
6 information.

7 And it simply came back incorrect once
8 again. So I said, Jim, do you need me to do your job
9 for you or can you do your job? And I'll certainly
10 help if I possibly can.

11 Q. And did Mr. Beyer ever correct the
12 situation and ensure that his sales team were
13 providing you with accurate, uninflated information?

14 A. He did not. Based on the funnel review
15 that you did previously, the accounts didn't close.
16 So there was very inaccurate information always
17 provided.

18 MR. RUTCHOW: We would move to admit
19 Exhibit 9, Your Honor.

20 THE COURT: Any objection?

21 MR. ZENNER: No objection.

22 THE COURT: Received.

23 (Defense Exhibit No. 9 was admitted.)

24 MR. RUTCHOW: Your Honor, we're providing
25 the witness with Defendant's Exhibit 10.

1 BY MR. RUTCHOW:

2 Q. Mr. Bolds, you've been handed Defendant's
3 Exhibit 10, which is an August 17 email from you to
4 Mr. Beyer. What was the purpose of sending this
5 email?

6 A. Because, once again, I got back
7 inaccurate information, which I hold myself
8 accountable to the board and expected Jim to hold
9 himself and his team accountable. But that did not
10 occur.

11 And, again, I had to go back to Jim and
12 explain where all the mistakes were in the funnel,
13 make suggestions to him on how to fix them. And then
14 again ask if he knows what he's doing as it relates to
15 managing this extremely important tool.

16 Q. And what was Mr. Beyer's primary job
17 responsibility for Vestagen?

18 A. He was senior VP of sales, who was
19 responsible for developing the sales protocol,
20 developing the sales process, developing the call
21 point strategy, developing the forecasting tool,
22 hiring personnel, training personnel, creating an
23 environment of accountability. And also appreciation
24 for the employees so that you can get as much out of
25 them as possible by making them feel good and making

1 them feel like they have the ability to win and
2 accomplish what they need to.

3 Q. And Mr. Beyer was hired by the board of
4 directors; is that right?

5 A. Correct.

6 Q. So these were duties assigned to him by
7 the board of directors?

8 A. Correct.

9 MR. RUTCHOW: Your Honor, we would move
10 to admit Exhibit 10.

11 THE COURT: Any objection?

12 MR. ZENNER: No objection.

13 THE COURT: Received.

14 (Defense Exhibit No. 10 was admitted.)

15 MR. RUTCHOW: Your Honor, this is
16 Defendant's Exhibit 11.

17 BY MR. RUTCHOW:

18 Q. Mr. Bold, can you identify Defendant's
19 Exhibit 11?

20 A. Yes. This is just a snapshot, a summary
21 of each of those categories and how much business was
22 being targeted and then how much business was expected
23 to close in 2016 based on each of the categories.

24 Q. Okay. And what was the purpose in you
25 sending this mail to Mr. Beyer?

1 A. Once again, I was going to -- let me read
2 here. I think I was presenting to an investment
3 group. And investment groups -- or investors are very
4 detail-oriented and want to know everything about your
5 process and targeting strategy. And it looks like
6 this information was, again, inaccurate and
7 overstated.

8 Q. And this is information that Mr. Beyer
9 provided to you?

10 A. Correct.

11 MR. RUTCHOW: Your Honor, we would move
12 to admit Defendant's Exhibit 11.

13 THE COURT: Any objection?

14 MR. ZENNER: No objection.

15 THE COURT: Received.

16 (Defense Exhibit No. 11 was admitted.)

17 MR. RUTCHOW: Your Honor, we are passing
18 up Defendant's Exhibit 12.

19 BY MR. RUTCHOW:

20 Q. Mr. Bold, you've been handed Defendant's
21 Exhibit 12, which is an email from you to Mr. Beyer
22 dated August 21, 2016. Can you tell me what the
23 purpose of sending this email was?

24 A. Yes. This is related back to the much
25 earlier email where I asked Mr. Beyer for the steps

1 that were involved in the funnel process in terms of
2 what were the threshold or metrics that a customer had
3 to go through in order to move from the targeting to
4 the discovery to the qualified stage.

5 And, again, as of August 21 I did not
6 receive the information I requested. And he was
7 solely responsible for developing this protocol to
8 support the funnel process that we implemented.

9 Q. Okay. If you look back at Defendant's
10 Exhibit 10, second paragraph of your email in
11 Defendant's Exhibit 10 says, also any idea when you
12 will have the ten or so criteria for each category to
13 move from targeting through close by stage.

14 Is that the same criteria or categories
15 that you're referring to in this August 21 email?

16 A. It is.

17 Q. Okay.

18 MR. RUTCHOW: Your Honor, we would move
19 to admit Exhibit 12.

20 THE COURT: Objection?

21 MR. ZENNER: No objection.

22 THE COURT: Received.

23 (Defense Exhibit No. 12 was admitted.)

24 MR. RUTCHOW: This is Defendant's
25 Exhibit 13, Your Honor.

1 BY MR. RUTCHOW:

2 Q. Mr. Bold, earlier you had testified that
3 you had -- I believe it was in the August 3 email that
4 you had requested that Mr. Beyer put together the
5 various criteria and that you didn't get that back
6 from him until you had provided him with a template
7 for how to do it?

8 A. Correct.

9 Q. Is this -- what's been marked as
10 Defendant's Exhibit 13, which is an August 22 email,
11 is that where you sent -- the subject is Vestagen
12 Sales Road Map. Is that you sending to him that
13 template for how to do it?

14 A. It is.

15 Q. Could you speak a little closer to the
16 mic?

17 A. Sorry. Yes. Yes, it is.

18 Q. And then it was after this that he sent
19 you back a funnel based on the information you'd
20 provided him; is that right?

21 A. Not a funnel, but the criteria that needs
22 to be included in the funnel to track the progress of
23 each account.

24 Q. Okay. And was what he sent back to you
25 same as or different than what -- this template that

1 you'd sent him?

2 A. Very similar to the steps that were
3 required in that process.

4 MR. RUTCHOW: Your Honor, we would move
5 to admit Defendant's 13.

6 THE COURT: Any objection?

7 MR. ZENNER: No, Your Honor.

8 THE COURT: Received.

9 (Defense Exhibit No. 13 was admitted.)

10 MR. RUTCHOW: Earlier we had admitted
11 Defendant's 20, and I'd like to have the witness -- a
12 copy put back in front of the witness.

13 BY MR. RUTCHOW:

14 Q. Mr. Bold, in looking at Defendant's
15 Exhibit 20, at the bottom of the first page is an
16 email dated September 20 from you to Mr. Beyer and
17 then it continues on to the top of the second page
18 with five comments.

19 Did you send this email to Mr. Beyer?

20 A. The one on the bottom?

21 Q. Yeah, the one on the bottom.

22 A. Yes.

23 Q. What was the purpose of providing these
24 comments to him? What was going on right now?

25 A. Because, again, I think this was the

1 fifth board meeting that he attended throughout the
2 course of the nine months. And as you can see, there
3 were -- again, he was supposed to put together slides
4 and put together forecasts and put together
5 expectations around accounts closing, and it simply
6 wasn't there. So I had to, again, instruct him on how
7 to do it and what was required for the fifth board
8 meeting that year so far.

9 Q. So was this the same information you'd
10 been asking him for for the August board meeting that
11 were the subject of the earlier emails?

12 A. Yes.

13 MR. ZENNER: Objection, leading.

14 THE COURT: Leading. Don't lead.

15 BY MR. RUTCHOW:

16 Q. So the comments that you raised in this
17 September 20 email, had you had discussions with
18 Mr. Beyer about these types of issues before?

19 A. Yes. For nine months. And I even say it
20 here, and after nine months it's going to be viewed as
21 a very concerning situation by the board.

22 MR. RUTCHOW: That one's already in,
23 Your Honor.

24 THE COURT: Excuse me?

25 MR. RUTCHOW: I was about to move it into

1 evidence, but it's already in.

2 THE COURT: It's already in.

3 BY MR. RUTCHOW:

4 Q. Other than these sales process and
5 performance issues, did you have any other issues with
6 Mr. Beyer's conduct?

7 A. I did. He treated the people that worked
8 for him and around him unlike anybody I would ever
9 treat. He would belittle people and condemn them and
10 basically just let them know that he didn't think
11 highly of them and didn't respect them.

12 And even an individual like Brain
13 Crawford, who was the guy that was driving all the
14 sales within the organization, who also closed
15 Baptist, he would demean him and belittle him on
16 emails and just in person as well.

17 Q. Did you have -- ever have any discussions
18 with Mr. Beyer about his treatment of other employees?

19 A. I did, on many occasions. With the Gene
20 Deutscher situation, not only did I speak with him,
21 but I put Gene, Jim and myself on a conference call
22 because I wanted to see if Gene was making these
23 things up. Because I didn't know Gene at the time and
24 he worked for Jim, and I only knew of him based on
25 what Jim would tell me about Gene. Because it was two

1 or three months into the organization.

2 And the three of us got on a call, and
3 Gene was very articulate in terms of his
4 dissatisfaction with Jim on several different levels.
5 And Jim agreed with him and apologized and said I'll
6 try to do better. And it ended up that Gene still
7 said, no, I don't -- I can't work for a person like
8 that. That was one occasion.

9 I remember another occasion, very
10 specific occasion where I was at a meeting in Orlando
11 and Jim was in the office and I think I was at an
12 investor meeting. And the day before we spoke -- and
13 I said, we got to make -- we have to make sure Brain
14 is, you know, happy here because he's driving all the
15 revenue at Northwell and has great relationships
16 within the organization with customers.

17 And Jim said, okay, okay. And the next
18 day I was flabbergasted. The next day he sent Brain a
19 nasty email about how he needs to close business
20 faster at Northwell, but he's not going to allow him
21 to go to New York because he wants him to close
22 business in Florida. And he needs to review his
23 schedule or his trips a few weeks in advance because
24 he needs to close the business at Northwell, but he's
25 not allowed to go there and he needs to replicate that

1 in the southeast.

2 It was a very bizarre email. I drove
3 right back to the office again. I closed the door in
4 his office, I said, Jim, what are you doing? How can
5 you do this when we just had the conversation
6 yesterday about how we need to embrace Brain because
7 of his productivity. And he didn't have an answer.
8 He didn't have an answer.

9 He got frustrated about something and
10 fired off a nasty email to him. And Brain -- that was
11 the point where Brain said, I can't work for this guy.
12 And that's when -- it wasn't -- it wasn't behind
13 anybody's back.

14 Jim was very aware of the confrontational
15 attitude he had with people and the fact that -- the
16 fact that people didn't like working with him. There
17 were -- I had -- or conversations with Gerry Tighe
18 where he told him he was a pharmaceutical rep and
19 didn't have the ability to sell medical devices; where
20 he asked Gerry to set up a meeting at Hackensack.

21 On a Monday night he called Gerry and
22 said, set up a meeting on Thursday morning. I'm
23 flying in. My schedule changed. Gerry called in a
24 big favor from the chief of patient care at Hackensack
25 University, which is a big title and a big facility.

1 Gerry confirmed with Jim, he had the
2 meeting set up for I think it was 9 o'clock on
3 Thursday morning. Gerry goes to the meeting. Jim
4 never shows up. Gerry called him, he said, oh, I
5 forget. I forgot that I told you to set the meeting
6 up.

7 There were just many, many, many
8 instances like that that I would speak with Jim about
9 very frankly and just never got better. And it got to
10 the point where these sequence of events led up to the
11 termination.

12 Q. Well, did you ever put Mr. Beyer on
13 notice that his conduct could lead to his termination?

14 A. Absolutely.

15 Q. Tell me when you did that.

16 A. I did it -- I did it every time there was
17 a confrontation with an employee. And these are good
18 people. And they're talented people. When he -- when
19 he belittled and called Marc Lessem emotionally
20 disturbed or something like that, when he belittled
21 Gene, when he belittled Brain, I said, Jim, you cannot
22 continue your conduct like this. You cannot continue
23 to belittle and degrade individuals or your employment
24 will be terminated. And it needs to improve
25 dramatically or else you won't be working for Vestagen

1 any longer.

2 And that was -- that was for personnel
3 reasons. And then also -- I mean, you can see how
4 many times I had to talk with him about his lack of
5 ability to -- this is Sales 101 leadership stuff.
6 This is something I did when I was, you know, very
7 young. To not be able to do this kind of stuff -- I
8 would say to him, Jim, how can you possibly lead an
9 organization if you can't even educate the people on
10 simple technologies that you're supposed to be the
11 leader of.

12 So -- and I would let him know that we
13 can't continue this any longer. And it needs to
14 improve dramatically.

15 Q. There was testimony earlier, there was an
16 exhibit that I put in front of Mr. Beyer regarding the
17 email that he sent to Mr. Lessem, telling him that he
18 had emotional problems and needed professional help.
19 Is that the situation with Mr. Lessem you were just
20 referring to?

21 A. Correct, yes.

22 Q. So you talked with Mr. Beyer about that
23 situation?

24 A. I did. I'd say three or four weeks
25 later, because Marc was embarrassed to tell me that

1 that communication came from Jim Beyer.

2 Q. What did you tell Mr. Beyer when you
3 talked to him about this situation?

4 A. I just said, this is just another example
5 of you causing people to want to leave the
6 organization. And, again, it has to be fixed, it has
7 to improve dramatically or you no longer can be
8 employed with this organization.

9 Q. Did you have any circumstances in which
10 employees did threaten to quit based on how Mr. Beyer
11 was treating them?

12 A. Yes. Gene Deutscher put in writing that
13 he was going to quit. Brain Crawford said he would
14 not work with him. You know, we didn't have a whole
15 lot of salespeople, so there were a limited number of
16 people that directly reported in to Jim.

17 Q. And I believe it was made
18 Plaintiff's Exhibit 3. Are you familiar with
19 Vestagen's employee handbook?

20 A. Yes, I am.

21 Q. Does that handbook have any policies that
22 prohibit employees from threatening or belittling
23 other employees?

24 A. Absolutely it does.

25 Q. Did you have any conversations with

1 Mr. Beyer regarding Mr. Deutscher's age or mental
2 faculties?

3 A. I did.

4 Q. Tell me about that.

5 A. I didn't know Gene at all for -- I never
6 met him, other than the one time prior to me joining
7 the organization, there was the sales meeting that Jim
8 talked about and I had the opportunity to speak with
9 Gene.

10 Seemed like a very competent hospital
11 executive who actually was a salesperson who worked
12 for a company called Relamatrix, which is where we
13 hired him from, which actually sold services into
14 hospitals. So he was a salesperson that provided us
15 leads into facilities in order to try and generate new
16 business.

17 So I -- that's all I knew of Gene. And
18 then Jim talked to me and I remember where I was, I
19 was in my -- my back office, and he said -- and it
20 struck me very odd. He said, Bill, he forgets all --
21 everything. He's senile, he's got dementia. He's
22 sick all the time. I've got to fire him. I said,
23 maybe that's the case, I said, but I don't know the
24 guy.

25 So, you know, after he starts reporting

1 in to me, let's determine if, in fact, we should fire
2 him. That could be a very distinct possibility if it
3 was for business reasons. And it turned out that we
4 never did, because after reporting in to me he was a
5 very competent, well-spoken, had great relationships
6 in the field, and he continued on with us.

7 Q. There was some testimony earlier from
8 Mr. Beyer that prior to his formal start date of
9 January 4 that he attended a Vestagen sales meeting in
10 December 2015. Did you hear that testimony?

11 A. I did.

12 Q. Were you at that same sales meeting?

13 A. I was.

14 Q. Did Mr. Beyer do anything at that meeting
15 that caused you concern with regard to his
16 performance?

17 A. He did, something relatively significant,
18 in that the entire company was in a two-day meeting
19 because they were implementing a new sales strategy --
20 which eventually got tweaked anyway, but they were
21 implementing a new sales strategy. We were having the
22 opportunity to meet some of the Relamatrix folks that
23 were the liaisons into high-level executive accounts.

24 And on Day One things were pretty much
25 normal, Jim was relatively quiet, learning, and I

1 was -- I was just simply asking questions. On Day Two
2 I think we had dinner that night, and I went to bed, I
3 don't know, 11 o'clock or so. Jim was still up.

4 On Day Two -- and, again, we're meeting
5 our team. So I'm the CEO of the company and all 20
6 people in the room report to me. At least four or
7 five of the people report to Jim, so first impressions
8 are everything.

9 So during Day Two, he literally fell
10 asleep five, ten times during the meeting. Literally
11 nodding off in the chair. And when he wasn't nodding
12 off, he was playing -- on Facebook because there were
13 people sitting next to him that --

14 MR. ZENNER: Objection, Your Honor. I
15 don't think he has firsthand knowledge of any of this.

16 THE COURT: Sustained. Sustained. Not
17 what other people told you, only what you witnessed
18 yourself.

19 THE WITNESS: Okay. I witnessed Jim
20 falling asleep consistently throughout Day Two. I
21 had -- I had four or five of the executives and the
22 board -- I had Dale Pfof, the executive chairman, I
23 had Ben Favret the founder, I had Marc Lessem, the
24 chief marketing officer, and one or two of the sales
25 people come up to me three-quarters of the way through

1 that day --

2 MR. ZENNER: Same objection, Your Honor.

3 THE COURT: Response?

4 MR. RUTCHOW: Your Honor -- and I can
5 connect this up. I think he's about to testify as to
6 information that was provided to him that led him to
7 have a discussion with Mr. Beyer about Mr. Beyer's
8 conduct. So it forms the basis for Mr. Bold's
9 understanding --

10 THE COURT: This is before he even
11 started working for the company.

12 MR. RUTCHOW: Yes, it is, Your Honor.

13 THE COURT: So why is this -- why is this
14 relevant?

15 MR. RUTCHOW: Because, Your Honor,
16 Mr. Bold's going to testify that he verbally
17 reprimanded Mr. Beyer at this meeting. And I believe
18 he's going to testify that similar instances of
19 disinterest and lack of attention to meetings with
20 customers and employees occurred throughout his
21 employment. So this was a pattern.

22 MR. ZENNER: He's not going to have any
23 firsthand knowledge of any of these meetings either
24 because he didn't attend any of them.

25 THE COURT: You can testify to -- to your

1 reprimands of Mr. Beyer to his -- what you said to
2 him. You can --

3 MR. RUTCHOW: That's fine, Your Honor.

4 THE COURT: -- testify to that.

5 MR. RUTCHOW: That's fine, Your Honor.

6 THE WITNESS: Okay. Yes, ma'am.

7 BY MR. RUTCHOW:

8 Q. As a result of this meeting did you
9 reprimand Mr. Beyer?

10 A. I did. At the break, roughly around
11 3 o'clock in the afternoon I took Jim into the lobby
12 of the hotel. I said, Jim, what are you doing? This
13 is -- this is our opportunity to make the first
14 impression.

15 These individuals are looking to us to
16 turn this company around and to lead this organization
17 into something greater than what it is today. You
18 can't conduct yourself where you're falling asleep and
19 you're completely disinterested in what is going on
20 throughout the day.

21 And he apologized. He said, I'm sorry.
22 I won't do it again. And for the next hour or so he
23 did wake up and ask more questions and got a little
24 bit more engaged. But it did quite significant damage
25 with the team.

1 Q. During the remainder of Mr. Beyer's
2 employment with the company, did you ever have
3 occasion to reprimand him again for being
4 disinterested in either company meetings or customer
5 meetings?

6 A. Well, based on what I heard when he
7 attended --

8 MR. ZENNER: Objection, Your Honor.

9 THE WITNESS: -- meetings --

10 THE COURT: Again, this is --

11 MR. RUTCHOW: Again, I think this is
12 notice to him that forms the basis for the reprimand.

13 MR. ZENNER: This is the classic
14 end-around for every hearsay objection. Well, it's
15 really just proving what was said. It's proof he's
16 introducing it under --

17 THE COURT: It's proving his state of
18 mind, and that is an exception. So go ahead. Not
19 what other people told you.

20 THE WITNESS: Sure.

21 BY MR. RUTCHOW:

22 Q. The basis of your reprimand, why you
23 reprimanded him, what you said to Mr. Beyer.

24 A. Because Jim was not focused on his job
25 responsibilities. He was focused on -- for some

1 reason, Facebook and being aloof in front of customers
2 to the point where -- to the point where it was
3 embarrassing for certain people to be in meetings
4 because of the way he conducted himself.

5 Q. And what is the reprimand that you gave
6 to Mr. Beyer as a result?

7 A. The reprimand is that you have to be a
8 leader within the organization and be the person
9 responsible for driving those meetings and being
10 passionate and engaged when you're with a customer as
11 opposed to the complete opposite.

12 Q. Did you ever attend any prospective
13 customer meetings with Mr. Beyer in which he did
14 anything that you had to reprimand him for?

15 A. I did. We went to a meeting, both of us
16 were a little bit cautious about it. It was a meeting
17 in St. Louis with a company called Scrubs & Beyond.
18 They have 130 stores across the US. They are very
19 much tied into the Strategic Partner Organization,
20 which is the biggest retailer out there.

21 So Jim had access or got access to the
22 CEO of that organization, I think it was the chief
23 marketing executive as well. We talked prior to going
24 into that meeting about holding things close to our
25 vest, because we thought very much so that they would

1 take that information back to our competitor, which
2 ultimately they did, and try to -- try to use the
3 words that were used in that meeting against us.

4 And we were very specific about using
5 words like killing bacteria in the hospital
6 environment or reducing hospital-acquired infections
7 and making grandiose statements like that that were
8 untrue, because we don't do that.

9 But if you embellish a little bit during
10 a meeting, it makes it sound even better, the
11 technology, than what we have to offer. And Jim fell
12 into that trap and made some comments about us having
13 a 99.99 percent kill rate of bacteria and
14 microorganisms and correlating that back to
15 hospital-acquired infection reduction.

16 And the CEO even said to Jim, are you
17 sure you want to say that? And I cringed. And then
18 we went outside and I said, why did you say that? We
19 talked about not saying that. We talked about holding
20 it close to our vest because that information would
21 probably flow back to our biggest competitor. And it
22 occurred.

23 Q. There was some testimony earlier about
24 Mr. Beyer, a March 10 email that Mr. Beyer sent to
25 Susan Dolan at Colorado Children's where he attached a

1 copy of the Vestagen Literary Library?

2 A. Correct.

3 Q. Do you remember that testimony?

4 A. Yes, I do.

5 Q. Did you ever have any discussion with
6 Mr. Beyer about that incident?

7 A. Jim -- Jim is accurate in that Marc
8 Lessem was -- let me back up. Marc Lessem was very
9 upset over that and had the conversation with Jim. I
10 had a following conversation with Jim, and I wasn't
11 as -- I didn't convict Jim because I thought
12 possibly -- he should have opened up the email and
13 read it -- or opened up the attachment and read it.
14 Didn't do that. But I'm not sure he did it
15 maliciously.

16 Q. And there was also some testimony
17 regarding an email that he sent to a Sharon Holmes at
18 Dallas Children's Hospital two days after he'd just
19 had a meeting at Dallas Children's where her response
20 was that he was insulting her intelligence. Did you
21 get involved in that situation at all?

22 A. I did.

23 Q. There was also some testimony that
24 Mr. Beyer had sent an apology to Ms. Holmes, and he
25 says he did that on his own. Is that true?

1 A. He did -- he did because I didn't know
2 the extent of the email that he originally sent. I
3 asked for it, but then I just got a copy of the
4 apology. And then I subsequently got a copy of the
5 original email that he sent. And he was apologetic.

6 And I made a comment like, well, you
7 know, passion is good, but make sure that -- you know,
8 make sure that you think your way through things like
9 this going forward.

10 Q. Mr. Beyer testified that in his opinion
11 you wanted to take over the sales organization. Is
12 that true?

13 A. Last thing I wanted to do was to take
14 over the sales organization. I had so many
15 responsibilities, I was trying to raise \$15 million
16 with a company that was, you know, on the verge of
17 running out of money.

18 And my job was to go out there and meet
19 with venture capitalists, tell them how important --
20 or how successful we were being from a field
21 perspective. Tell them all the processes and plans
22 that we had in place so that we're going to be able to
23 grow this company to a 40 or \$50 million company in
24 order to acquire their investment.

25 So it would have been -- it would have

1 been the greatest thing in the world for me for Jim
2 Beyer to be wildly successful and I could have focused
3 on supply chain and manufacturing and R&D and FDA
4 requirements and mostly venture capital and
5 fundraising.

6 Q. Are you aware of any other -- strike
7 that. There's been some testimony that you terminated
8 Mr. Beyer on September 22, 2016, and at the time you
9 also offered him a demotion to a sales rep position.
10 Why did you make that offer?

11 A. I don't think it was exactly called a
12 sales rep. I think it was a regional vice-president.
13 As Jim said earlier, John Black left, who was hired by
14 Jim, he left about a month earlier. So there was a
15 void in the Midwest in terms of where John Brown --
16 John Black was covering.

17 Jim lives here in Nashville, so he had
18 access to the Midwest. And I knew for a fact that he
19 had -- he had -- did not have the capabilities,
20 talent, experience, to be a sales leader, but that
21 doesn't mean that he can't be an individual
22 contributor. And there are a lot of great salespeople
23 that can't become great managers.

24 And, therefore, I thought if Jim had just
25 the responsibility for himself, and not for other

1 people, that he would be able to focus and be more
2 organized in his approach with my help and guidance
3 and possibly make an impact from a pure sales
4 perspective as opposed to a leadership perspective.

5 Q. Why didn't you just terminate him for
6 cause?

7 A. In hindsight, I should have, but I was
8 benevolent and I thought that I would give him an
9 opportunity to continue with the company. Most
10 importantly, because of the shares. I told him that
11 his shares would not change.

12 So he had ownership in the company. He
13 had significant ownership in the company. And if he
14 was demoted to a regional vice-president, as opposed
15 to senior VP of sales, he would maintain those
16 options, which eventually hopefully some day would be
17 worth significant dollars.

18 He also would maintain his severance
19 because I wasn't planning on taking that away if he
20 accepted the regional vice-president job as well. So
21 I -- I was empathetic and benevolent and wanted to try
22 and give him another opportunity.

23 Q. And so when he didn't accept this
24 demotion, what was your response?

25 A. I said that, Jim, I have the ability to

1 fire you for cause based on all of these different
2 things, your interaction with your -- your
3 confrontational interaction with the internal
4 personnel, with customers, your lack of performance,
5 your inability to develop metrics for the sales
6 forecast.

7 You know, I just named all the time that
8 he was not able to do during his nine months. And I
9 said, I can fire you for cause, but I'm willing to
10 work with you, Jim. I know you have a family.
11 I'll -- I'll offer you a three-month severance instead
12 of the six months. We'll both parts ways amicably and
13 we'll move on. And his response was no.

14 MR. RUTCHOW: Your Honor, if I could just
15 have a minute.

16 THE COURT: Okay.

17 (Pause in proceedings.)

18 MR. RUTCHOW: Your Honor, that's all I
19 have at this time.

20 THE COURT: Okay. Any cross?

21 MR. ZENNER: Your Honor, could we take a
22 five-minute break?

23 THE COURT: Yeah, why don't we take a --
24 we'll take a 15-minute break.

25 (Whereupon, a break was taken from

1 2:50 p.m. to 3:10 p.m.)

2 THE COURT: All right.

3 Cross-examination.

4 **CROSS-EXAMINATION**

5 BY MR. ZENNER:

6 Q. Mr. Bolds, you and I have spoken once
7 before in a deposition. You were speaking about you
8 would have loved Mr. Beyers to have been wildly
9 successful in the sales process. Do you recall that?

10 A. Correct, yes.

11 Q. Now, you terminated him with the intent
12 of taking over the sales process yourself; correct?

13 A. No. I didn't know if I would ultimately
14 take over the sales process as the leader of the sales
15 organization or if I would hire somebody else to take
16 over that role.

17 Q. Your initial plan was to, quote/unquote,
18 whip the sales process into place in about 30 days.
19 Remember that?

20 A. Correct, that was my statement.

21 Q. All right. Now, you're still doing the
22 sales; right? You've never replaced him?

23 A. I did two things. I put Brain in charge
24 of the direct organization and I put Milton Bugg in
25 charge of a -- a very unique distribution channel that

1 we're undertaking at this point.

2 Q. And do you disagree with Mr. Pruna's
3 testimony about revenues being down in 2017?

4 A. Compared to 2016?

5 Q. Yes.

6 A. No, I -- I did disagree with that. We
7 have bookings now through November, which will allow
8 us to hit roughly \$3.2 million this year.

9 Q. When were those bookings put into place?

10 A. Over the last -- throughout the year.

11 Q. Who are they?

12 A. Basically Northwell, continue -- we went
13 from two hospitals at Northwell to approximately eight
14 hospitals at Northwell. And things have changed
15 dramatically in that the strategy, based on some
16 recent changes, we signed a deal with a strategic
17 partner that is the largest medical textile company in
18 the world with 60 salespeople that are very much
19 focused on selling clinical textiles; and, therefore,
20 we believe that we can leverage that relationship to
21 expand our sales at a faster rate.

22 Q. Now, there was some testimony about this
23 December sales meeting of 2015. I don't want to spend
24 much time on that, but that was before Mr. Beyers
25 actually started with the company; correct?

1 A. Before his actions started with the
2 company?

3 Q. Yes.

4 THE COURT: Before he actually started.

5 THE WITNESS: Oh, actually started with
6 the company. He signed his employment agreement prior
7 to that, but, yeah, he did not start until January 4.

8 BY MR. ZENNER:

9 Q. He was still employed with his former
10 employee at that point, wasn't he?

11 A. I don't know that.

12 Q. Okay. And that wasn't the basis --
13 you're not telling this Court that that was the basis
14 of terminating him, are you?

15 A. No, absolutely not.

16 Q. Okay. Well, the same thing with respect
17 to this March 10 email, which is Defendant's
18 Exhibit 4. That is the email where Mr. Beyers sent
19 some information to Susan Dolan. You remember that;
20 right?

21 A. I do.

22 Q. Now, that happened more than six months
23 before his termination; right?

24 A. Correct, yes.

25 Q. Okay. And he wasn't given a written

1 reprimand as a result of it --

2 A. Correct.

3 Q. -- correct? Nothing placed in his
4 personnel file as a result of it; correct?

5 A. Correct.

6 Q. Wasn't told he was going to be
7 terminated; correct?

8 A. Correct.

9 Q. And it did not form the basis of the
10 decision to terminate him in September, did it?

11 A. It did not.

12 Q. Then why is that included in your
13 discovery answers as one of the reasons for his
14 termination?

15 A. Well, I think it was part of a sequence
16 of events where you have to be concerned about an
17 individual's judgment along the way.

18 Q. Did you ever see the initial case
19 management order submitted by your attorney in this
20 case?

21 A. I did.

22 Q. You know that the disclosure of
23 confidential information was nowhere mentioned in the
24 initial case management order as a reason for
25 termination?

1 A. I don't recall.

2 Q. Isn't it true that that was just an
3 after-the-fact attempt to justify this termination?
4 Revisiting the history?

5 A. I don't recall, to be honest with you. I
6 just admitted that it wasn't a part of it.

7 Q. Well, let's talk a little bit about some
8 of these exhibits that you've gone over. Let's look
9 at D6.

10 A. Yes, I have it.

11 Q. D6.

12 A. Oh, D? D6?

13 THE COURT: D6. Are the defense exhibits
14 up here? They're not in the notebook.

15 THE WITNESS: I have P6.

16 THE COURT: No, we're talking about D.

17 MR. ZENNER: Thought I'd move things
18 along.

19 THE COURT: Do you want him to have all
20 of them?

21 MR. ZENNER: Yes.

22 THE COURT: All right. Let's just give
23 him all the defense exhibits. Are they in numerical
24 order? No, they're not. Sorry.

25

1 BY MR. ZENNER:

2 Q. This was an email dated August 1.

3 A. Just give me a second. I'm going to try
4 and find it.

5 I have it.

6 Q. Now, this is an email dated August 1.
7 Now, tell me, is there anywhere in this email where it
8 mentions having cause for termination? Are the words
9 cause for termination, cause or termination, used in
10 this document?

11 A. No.

12 Q. Is the language ten business days to cure
13 used in this document?

14 A. No.

15 Q. And you said this document was sent by
16 you as a representative of the board. Now, was this
17 even copied to the other board members?

18 A. It was based on the expectations of
19 myself and Jim Beyer from the board in terms of what
20 they would say.

21 Q. But this was you as the CEO. This wasn't
22 you acting as a representative of the board. If you
23 would have done that, you would have said, on behalf
24 of the board of directors, this is what we expect.

25 A. I am the representative of the board.

1 I'm the liaison between Vestagen and the board and
2 from the board to Vestagen.

3 Q. How does --

4 A. That's my job --

5 Q. -- that --

6 COURT REPORTER: Hold on.

7 THE WITNESS: That's my job as a CEO.

8 BY MR. ZENNER:

9 Q. How does anyone know when a communication
10 comes from you whether or not it's coming from you as
11 the CEO or whether or not it's coming from the board?

12 A. Like I said, if it's related to
13 board-related information and activity, it's coming
14 from the board. And that's what this is related to.

15 Q. And you didn't even copy the board on
16 this.

17 A. I did not.

18 Q. Let's go to D7. Do you have that in
19 front of you?

20 A. Not yet. Give me a second.

21 Q. August 3?

22 A. Give me a second.

23 I got it.

24 Q. Now, again, there's nothing in this email
25 that indicates notice of cause for termination, is

1 there? The language is not used.

2 A. The language is not used.

3 Q. And there's no language in this document
4 with respect to ten business days to cure, is there?

5 A. Correct.

6 Q. And this document is signed by Bill Bold,
7 chief executive officer. It doesn't say Bill Bold,
8 chief executive officer and board member, does it?

9 A. Well, that's implied.

10 Q. Implied?

11 A. I am a board member.

12 Q. So any communication from you comes from
13 the board? It's from you as a board member?

14 A. No, but board-related requests are from
15 myself and the board.

16 Q. Again, no one else on the board is copied
17 on this email, are they?

18 A. It's not required that I copy the board
19 on communications.

20 Q. If you're speaking on their behalf --

21 A. I certainly do not --

22 Q. -- wouldn't you copy them on it?

23 A. Absolutely not.

24 THE COURT: Let me just ask, on either of
25 these emails, did the board acting as a body tell you

1 to send these emails?

2 THE WITNESS: The board told me what the
3 requirements were and what their expectations were,
4 and as a result of that I communicated that to Jim
5 Beyer.

6 THE COURT: When did they tell you these
7 things?

8 THE WITNESS: They would tell me this --
9 we would have a call a week or two prior to board
10 meetings and we would talk about what the expectations
11 were for the upcoming board meeting. And then I would
12 try to gather all the data that they were interested
13 in so that we would have an efficient meeting and, you
14 know, be able to provide them with as much data as
15 they were looking for.

16 BY MR. ZENNER:

17 Q. Okay. But there was never an instance
18 where the board said, send him an email that talks
19 about his performance and give him notice that we
20 expect better; correct?

21 A. Correct.

22 Q. All right. So same thing with respect to
23 D8. Do you have D8?

24 A. These aren't in order, so... I have it.

25 Q. You have it?

1 A. Yeah, I do.

2 Q. Okay. Now, again, nothing about
3 termination in this email; right?

4 A. Correct.

5 Q. Nothing about notice of having cause for
6 termination; correct?

7 A. Correct.

8 Q. Nothing about ten days' notice?

9 A. Correct.

10 Q. In fact, this one is addressed to the
11 team. Were you also speaking to the team on behalf of
12 the board of directors or was this you as Bill Bold,
13 CEO?

14 A. This was based on information required by
15 the board, which was extremely crucial for us to make
16 decisions going forward in terms of how much money
17 needed to be raised, how much time we had in terms of
18 cash flow. So this information was something that the
19 board needed desperately. And they needed accurate
20 information. And they needed it throughout Jim
21 Beyer's tenure as well.

22 Q. No board members copied on this email
23 either?

24 A. I don't copy board members unless it's
25 something extremely --

1 Q. Important?

2 A. -- important to them as it relates to an
3 action that needs to take place in immediate term.

4 Q. Important like notice that someone's
5 about to be terminated for cause and you have an
6 opportunity to cure, something important like that?

7 A. That's not the reason for this email in
8 terms of notification and a ten-day cure. This is an
9 email stating that I need accurate information from
10 Jim Beyer and I haven't been able to get it.

11 Q. Okay. The same is true with D -- let me
12 look at 9. D9. Do you see D9?

13 A. I have it.

14 Q. And, again, nothing about termination,
15 nothing about notice, nothing about ten days. And is
16 your testimony with respect to this email the same as
17 yours was with respect to the prior email but that
18 wasn't the intent of it?

19 A. Can you repeat that?

20 Q. I think you just testified about the
21 prior email that wasn't the intent to give notice of a
22 for cause termination and an opportunity to cure.

23 A. The reason for the email previously was
24 to ensure that Jim Beyer conducted his duties
25 accurately and effectively in order for me to have

1 information to make decisions with the board going
2 forward.

3 Q. Okay. And D10, is that the same thing
4 for D10. Same kind of email you're wanting?

5 A. It's basically putting Jim on notice that
6 I continually get bad information that needs to be
7 corrected.

8 Q. No notice or no language of termination
9 in this email either?

10 A. Correct.

11 Q. No mention of notice; correct? Right?
12 No mention of for cause?

13 A. Correct.

14 Q. No ten days mentioned; correct?

15 A. Correct.

16 Q. Go to D10.

17 A. That was 10.

18 Q. Or D11, I'm sorry. D11. Again, this was
19 entered as an exhibit, but there's no mention of
20 termination in it; correct?

21 A. Correct.

22 Q. There's no mention of notice?

23 A. Correct.

24 Q. There's no mention of for cause?

25 A. Correct.

1 Q. There's no mention of ten days?

2 A. Correct.

3 Q. And, in fact, you'd agree that Vestagen
4 has never given Mr. Beyer written notice that it had
5 cause for termination and that he had ten days to
6 cure?

7 A. I had verbal -- many verbal conversations
8 with him.

9 Q. Stick to the question. Listen. You'll
10 agree that Vestagen never gave Mr. Beyer written
11 notice that it had cause for termination and that he
12 had ten days to cure?

13 A. I agree.

14 Q. And isn't it true that you mentioned --
15 you kind of made vague reference in your direct
16 examination to having conversations with Mr. Beyers.
17 I take it you don't know the exact dates of those
18 conversations, do you?

19 A. All I heard was Mr. Beyers. Direct
20 conversation with Mr. Beyer?

21 Q. Yeah. When you had these conversations
22 with Mr. Beyers where you were warning them about his
23 job, do you know the dates of those?

24 A. I do. I remember specifically April 27,
25 which is the day that -- yeah, April 27, which is the

1 day that he sent Brain Crawford that nasty email after
2 Jim and I agreed that we need to embrace Brain in
3 order to ensure he continues to be as productive as he
4 was.

5 Q. Anything a little closer than five months
6 out from his termination?

7 A. Sure. I have --

8 Q. Do you have any dates?

9 A. Here's what I do have. I've usually had
10 those conversations with Jim every week on a Friday
11 because there were team calls. And Jim would lead the
12 team call and I would listen in, and then the sales
13 funnel would get updated and it would get updated
14 inaccurately.

15 And then those calls would take place
16 prior to the board meeting -- or those conversations,
17 I should say, would take place prior to the board
18 meeting because of the information that was requested
19 by the board from the commercial organization. And,
20 therefore, I would have those conversations with Jim
21 quite consistently.

22 Q. On these calls was there anyone else on
23 the call besides you and Jim that overheard these
24 conversations? Can anyone come in and confirm it?

25 A. Let me give you an example and you tell

1 me if it's appropriate. I'd say March -- March 30,
2 there was a meeting the following day scheduled at the
3 VA in Gainesville. Jim was not out on his own
4 literally after two and a half months in the field.
5 He always rode with a rep.

6 Q. Are they really going back to March 30?

7 A. Well, let me --

8 MR. RUTCHOW: Objection, Your Honor. He
9 should be given the opportunity to answer the
10 question.

11 BY MR. ZENNER:

12 Q. Go ahead, go ahead.

13 A. Give me the opportunity to speak. So I
14 had a -- a very distinct conversation with Jim and
15 said, Jim, you are -- you're out to lunch, you're not
16 engaged. You're aloof. And he acknowledged that and
17 said, Bill, I've been on auto pilot with Masimo for
18 the last two or three years, I'm very uncomfortable
19 stepping into this position because there's a lot of
20 moving parts. There's a lot of demand.

21 And he then -- and I said, okay. He
22 said -- he then went upstairs and met with Ben Favret
23 and told Ben he was going to resign because he
24 wasn't -- wasn't cut out for the position. So there
25 was corroborating...

1 Q. Okay. You're not saying he did resign?

2 A. He did not resign. He told Ben that he
3 wasn't -- he wasn't able to do the job, and Ben said,
4 well, then resign or you have a meeting tomorrow, so
5 let me train you after two and a half months on what
6 to say during the meeting.

7 Q. Was there any documentation of this? Do
8 you have anything to put in the file?

9 A. I do. I have an email from Ben.

10 Q. Have you produced it?

11 A. I have not.

12 Q. Why not? Why not?

13 A. I don't have an answer for that.

14 Q. Okay. Well, we've got something in
15 April, we've got something in March. And we've got
16 these weekly sales calls you've talked about. Anyone
17 actually participate in these conversations besides
18 the two of you?

19 A. No, I would prefer not to bring other
20 individuals in the organization into conversations I'm
21 having with my VP of sales as it relates to his lack
22 of performance and the lack of, I guess, lack of
23 appreciation for his fellow employees.

24 Q. And Mr. Pruna testified accurately that
25 there's absolutely nothing in his personnel file

1 documenting any of these verbal warnings to Mr. Beyer;
2 correct?

3 A. Agreed. My -- my goal was not to fire
4 Jim Beyer. My goal was to help him become successful.

5 Q. If you will please pick up D20. Maybe
6 it's not D20. Yeah, it is D20.

7 A. I have it.

8 Q. That is the email from you to Randy Scott
9 and Dale Pfof?

10 A. Pfof.

11 Q. Again, that's dated two days before the
12 termination; right?

13 A. Correct.

14 Q. And that's referencing an email exchange
15 that you had with Mr. Beyer that morning about some
16 slides; correct?

17 A. Correct.

18 Q. And you say in the second line, I've
19 reached the point where it is evident that he's not
20 the sales leader we need. This is the day you decided
21 to terminate him.

22 A. Correct.

23 Q. And you did it two days later?

24 A. My goal was to have Jim invest and agree
25 on a mutually beneficial outcome. I didn't call Jim

1 and say I'm going to terminate you. I said, Jim -- I
2 said, Jim, I know you're not happy.

3 I know you don't feel good about what
4 you're doing. He agreed. I know this is a
5 challenging marketplace. He agreed. I said, let's
6 figure out a way for you to exit gracefully and we'll
7 agree to provide three months' severance and we'll
8 part friends.

9 Q. After you made this decision on the 20th,
10 you never gave him notice that, hey, we've decided
11 that we've got cause for termination here and you've
12 got ten days to cure this thing?

13 A. I told Jim that on the 22nd, and I said,
14 let's work this out, Jim. And he said, no, I don't
15 want to.

16 Q. After you made the decision on the 20th
17 that you had cause to terminate him, you never gave
18 him another ten days' notice, did you?

19 A. I gave him the opportunity to have
20 another ten days' notice. And basically said, no, I
21 don't want to work here anymore. So that's -- that's
22 the way it went down.

23 Q. You told him that he was no longer going
24 to be employed as the senior vice-president of sales?

25 A. I didn't -- I didn't say that starting on

1 the 22nd. I said, Jim, let's figure out how to
2 transition you out of here. You can either do this,
3 meaning you can either stay on for a week or two or
4 three and let's figure out how to make this work
5 amicably or --

6 Q. And end amicably.

7 A. Pardon?

8 Q. You were not going to keep him in?

9 A. No, end it amicably at some point. Or
10 maybe you don't want to be the VP of sales. Maybe
11 you're not interested in that position anymore because
12 you're not being productive, you don't feel good about
13 what you're doing, you don't have a relationship with
14 your customers or your people.

15 Maybe you want to become an individual
16 contributor, and you have that opportunity as well,
17 Jim. You can keep your equity. You can keep your --
18 everything within your employment agreement. Why
19 don't you give that -- why don't you think about that.

20 Q. Just so we're clear, you told him on
21 September 22 that he was no longer going to be the
22 senior vice-president of sales?

23 A. I told him that, yes, he was no longer
24 going to be the senior VP of sales. We can do this in
25 one of two ways. We can transition out and allow him

1 to spend a little time potentially looking for an
2 opportunity and then I would also provide him
3 severance. Or if he's interested, he can take on the
4 individual contributor role and I would be able to
5 support that.

6 Q. And senior VP of sales is a position that
7 he had been hired for; correct?

8 A. He was.

9 Q. Right. And the offer to take on -- to be
10 an individual contributor would have involved a
11 significant pay cut, wouldn't it?

12 A. I was thinking of \$50,000 at that point,
13 which could have been negotiated with Jim.

14 Q. A significant reduction in status and
15 responsibilities in the company?

16 A. It wasn't -- it wasn't final at that
17 point. I was willing to have a conversation with Jim
18 as it relates to that.

19 Q. Now, you've accused him of disclosing
20 confidential information, falling asleep at meetings,
21 being disengaged, falsifying information in the sales
22 funnel, berating employees, belittling employees,
23 disrespecting employees, being completely ineffectual
24 in sales meetings. And that's the guy you offer
25 another position?

1 A. Like I said, you can be an individual
2 contributor and not be a great sales leader. You
3 can -- you can run a store effectively as a GM, and if
4 you can't do that, that doesn't mean that you can't
5 pump gas at the gas station.

6 Q. If you move down Exhibit 20, D20, the
7 second paragraph says here's my plan. Do you see
8 that? D20?

9 A. Yes.

10 Q. Here's my plan. I need to run the sales
11 org. I can do it easily and whip the process into
12 shape literally in 30 days.

13 So you're still the salesperson; right?
14 Or not?

15 A. I'm the CEO.

16 Q. Okay. Who did you -- who did you put in
17 there after you whipped it into place in 30 days?

18 A. Well, the first thing I did was I purged
19 all the false information that was in there. So now
20 we have targets that are actually realistic and
21 closeable as opposed to targets that were never even
22 possible. Pardon?

23 Q. The question was: Who did you put in
24 there after you'd whip this into place in 30 days?

25 A. As I said, I put Brain Crawford in as the

1 individual responsible for direct sales. And then
2 Milton Bugg for this secondary distribution channel
3 that we created.

4 Q. And when did Brain Crawford start that
5 position?

6 A. Brain probably started four or five
7 months ago.

8 Q. Little bit longer than 30 days, wasn't
9 it?

10 A. I didn't say I was going to put somebody
11 in place in 30 days. I said I was going to basically
12 whip the process in place, which is what I did. And
13 what that meant was to get a foundation of realism so
14 that we can determine where, in fact, we can or should
15 go.

16 Q. And then the next paragraph reads -- and
17 this is what we talked about already. In light of
18 John leaving, I have a void in the central US and was
19 going to offer it to Jim as an individual contributor,
20 as I do believe he can be managed, if he is only
21 managing himself.

22 He may or may not take it, but he does
23 have the knowledge so we don't have to retrain another
24 FTE. Salary will be dialed back by 50K per year. And
25 then you write: I will not pay his six-month

1 severance and this can be a way not -- to not have to.
2 Or to negotiate that back to a few months.

3 You threw this offer of another sales
4 position out there as a chip, a bargaining chip to try
5 to get him to negotiate back the severance that you
6 knew he was entitled to.

7 A. Is that a question?

8 Q. Isn't that true?

9 A. The answer is absolutely not.

10 Q. Wasn't that what it says?

11 A. I told Jim, while we were having that
12 cordial conversation of Jim, you're not happy, Bill,
13 you're right, I'm not happy, I'm not being productive,
14 Bill, I don't like this industry, I said, Jim, I have
15 the ability to terminate you for cause based on all of
16 these things.

17 Let's -- let's negotiate this and part
18 amicably and go with three months. That was one
19 option. Or you can continue on if, in fact, you don't
20 like what you're doing as a sales leader, and you can
21 become a regional vice-president as opposed to the
22 vice-president and take on this Midwest
23 responsibility.

24 Q. This says I will not pay his six-month
25 severance, and this can be a way to not have to or to

1 negotiate that back to a few months. You don't write
2 in this email, I have cause to terminate him and I've
3 given him notice and ten days to cure, so I'm not
4 going to pay his severance.

5 A. That's why I said that. I said, I will
6 not pay his six months' severance because we were very
7 aware that I could have fired him for cause, the board
8 was.

9 Q. And then you say --

10 A. This is to the board.

11 Q. Am I reading this right? You're saying
12 that the offering of another position is a way to not
13 have to pay the severance or to negotiate it back.
14 That's inconsistent with you saying, we don't have to
15 pay severance, period, because we have cause to
16 terminate.

17 A. We did have to pay --

18 MR. RUTCHOW: Your Honor, is there a
19 question pending?

20 THE COURT: Make it into a question,
21 Mr. Zenner.

22 BY MR. ZENNER:

23 Q. Isn't that inconsistent with position
24 that we had cause to terminate him anyway? We don't
25 have to pay him a severance?

1 A. We did, but I was -- I was hoping that
2 maybe he would -- he would consider the individual
3 contributor role since we wouldn't have to train
4 somebody new. He had the knowledge, and if he was
5 only focused on himself, he may take that on. And if
6 not, I'm not going to pay the six-month severance
7 because I have cause to terminate him.

8 Q. If we go to the end of this, you talk
9 about spinning this to investors. How are you going
10 to spin this to investors?

11 A. Yeah, that's a very good question. Part
12 of my hesitancy to move on Jim when I could have even
13 earlier, and should have even earlier, is that when
14 you're in the middle of the fundraising and you're
15 meeting many different venture capitalists that are
16 very, very detail oriented, there's a significant red
17 flag that gets put up if, in fact, you fire your
18 senior VP of sales during the fundraising process.

19 So I had the ability to terminate Jim
20 earlier, but kept him on longer because of my need to
21 not cause ruffles within the investor community. Or I
22 should say ripples instead of ruffles.

23 Q. We can have a discussion about why this
24 is, but the last sentence is true, that you believe
25 that you were going to hit the 2016 numbers and that,

1 in fact, happened, didn't it?

2 A. We were about \$45,000 short.

3 Q. Okay.

4 A. As I said, based on --

5 Q. So --

6 A. As I said --

7 Q. So the sales process --

8 COURT REPORTER: One at a time.

9 THE WITNESS: As I said, based on what
10 Brain was doing in that sentence.

11 BY MR. ZENNER:

12 Q. The sales process takes how long?

13 A. It varies. It could take a month. It
14 could take a year. It could take 18 months. It
15 depends on the timing of when the customer is
16 interested in buying.

17 Q. And the last three months, then, looks
18 like, what, a little over a million came in the door?
19 The last three months of the year and you're telling
20 me that that had nothing to do with the efforts of Jim
21 Beyer?

22 A. It didn't. It all came in from
23 Northwell.

24 Q. The sales process takes three to six
25 months, sometimes a year?

1 A. Can you restate that?

2 Q. No.

3 Just so we're clear, we know that this is
4 accurate to say with respect to written
5 communications, but even when you had these verbal
6 communications with Mr. Beyer, you never told him that
7 you've got ten days to cure from this date. You never
8 used that language; right?

9 A. I gave him more than ten days.

10 THE COURT: Answer the question, please.
11 Did you ever use those words?

12 THE WITNESS: Did I ever use the words
13 ten days? No. I used the words immediately or as
14 soon as possible.

15 BY MR. ZENNER:

16 Q. And you never used the words notice of a
17 condition that gives me cause for termination?

18 A. I did say that if, in fact, he continued
19 with the activity in terms of what he was doing or the
20 lack of activity in terms of what he was doing, he
21 would no longer be employed by Vestagen. And it
22 needed to be improved upon immediately to continue
23 your employment.

24 MR. ZENNER: Your Honor, that's all I
25 have.

1 THE COURT: Okay. Any redirect?

2 MR. RUTCHOW: No, Your Honor.

3 THE COURT: All right. You may step
4 down.

5 THE WITNESS: Thank you.

6 *****WITNESS EXCUSED*****

7 THE COURT: Next witness?

8 MR. RUTCHOW: Defense rests, Your Honor.

9
10 (Defense rests.)

11
12 THE COURT: Any rebuttal from the
13 plaintiff?

14 MR. ZENNER: Can I have five or ten
15 minutes to talk to my client?

16 THE COURT: Sure. I'll give you 15
17 minutes to talk to your client.

18 MR. ZENNER: Thank you.

19 (Whereupon, a break was taken from
20 3:45 p.m. to 4:03 p.m.)

21 MR. ZENNER: Your Honor, the plaintiff
22 rests. There will be no rebuttal proof.

23 THE COURT: Okay. I'll hear argument.

24 MR. ZENNER: Mr. Rutchow and I were
25 debating, Your Honor, whether or not argument was

1 truly necessary, but I will keep this very, very
2 short. We've fully briefed these issues already to
3 Your Honor.

4 THE COURT: I don't think there were too
5 many surprises.

6 MR. ZENNER: As Your Honor can tell,
7 there are many, many disputes between the parties
8 about performance and whether or not Mr. Beyers was
9 good at his job, bad at his job. That's really not
10 the important issue for this case. Mr. Beyer is
11 adamant that he was performing fully and Mr. Bolds is
12 adamant that he wasn't.

13 But what's important in this case is that
14 we look to the terms of the agreement and look to
15 whether or not this was a termination for cause or was
16 it an involuntary termination.

17 One of them entitles him to severance,
18 one does not. In order for him not to be entitled to
19 his severance, it has to be a termination for cause as
20 that term is defined in the employment agreement.

21 And the evidence has been very clear with
22 respect to subpart A, the disclosure of confidential
23 information. If there was any disclosure in March of
24 2016, it was admitted on the stand that that formed no
25 basis for the decision to terminate.

1 THE COURT: So A's out.

2 MR. ZENNER: You can rule that out. So
3 we're talking about the rest of these.

4 And Mr. Bolds admitted on the stand that
5 there has been no written notification to Mr. Beyer
6 giving him notice of a condition that would give rise
7 to a for cause termination and ten days to cure. So
8 we know that that wasn't done.

9 And then we've got some nebulous
10 testimony about these oral conversations. But we
11 don't have anyone ever saying the magic words, we are
12 giving you notice that we have cause to terminate you
13 and you have ten days to cure it.

14 In fact, we know from the proof that the
15 decision was finally arrived at on September 20 that
16 he finally did feel like he had cause to terminate and
17 then he terminated him two days later without any
18 further communication.

19 So it might be a harsh result,
20 Your Honor, but the job of this Court is to enforce
21 the agreement as it's written, and the agreement as
22 it's written requires them to give notice --

23 THE COURT: Why do you say it might be a
24 harsh result --

25 MR. ZENNER: You're right.

1 THE COURT: -- for you to win?

2 MR. ZENNER: I think I read that in a
3 case, Your Honor. I guess it's not a harsh result.
4 Poor phraseology on my part. You're absolutely
5 correct, Your Honor.

6 But if -- if the Court enforces the
7 agreement as written, Mr. Beyers is entitled to his
8 severance payment. They have breached the agreement.
9 And I would ask that judgment be entered accordingly.
10 Thank you.

11 MR. RUTCHOW: Your Honor, just because it
12 was belatedly brought up at the final pretrial
13 conference, and it was a very little bit of testimony
14 on that, start with something that Mr. Zenner did not
15 address, which is the belatedly readmitted claim of
16 promissory fraud.

17 Quite frankly, the testimony was that
18 Mr. Bold, who suggested the severance clause be
19 included, was not even an employee of Vestagen. He
20 was on the other side of the table at the time that
21 clause was suggested, clause that he also suggested
22 for his own agreement.

23 Promissory fraud claim has been made
24 against Vestagen. There's been no testimony that
25 Vestagen, the individuals who were responsible at

1 Vestagen for approving this agreement at the time it
2 was entered into, had an actual present intent at that
3 time to not pay the severance. The fact that the
4 severance wasn't paid at Mr. Beyer's subjective
5 surmise from the witness stand, cases are clear,
6 that's not enough. It is a clear and convincing
7 standard for promissory fraud --

8 THE COURT: Where's your case law
9 supporting clear and convincing standard for --

10 MR. RUTCHOW: It is, Your Honor -- if I
11 had it pulled up --

12 THE COURT: It's when you are trying to
13 reform the agreement, I believe, there might be a
14 clear and convincing standard. But Mr. Zenner and his
15 client are not trying to reform the agreement. I
16 believe that's a limitation on that higher level of
17 proof.

18 MR. RUTCHOW: Fair enough, Your Honor.

19 In either case, quite frankly, in this
20 case, again, the defendant, who's being accused of
21 promissory fraud, is Vestagen. There has been no
22 testimony that the decision-makers at Vestagen who
23 agreed to the contract on behalf of Vestagen at that
24 time didn't include Mr. Bold.

25 He was not yet employed, that those

1 individuals had an actual present intent not to pay
2 the severance. There's just no evidence of that,
3 Your Honor. And so we would submit that that claim
4 has no basis.

5 With regard to the breach of contract
6 claim, I think it's important that Mr. Zenner used the
7 words "magic words" because the contract doesn't
8 require magic words. There's a lot of things that
9 Mr. Zenner talked about aren't required by the
10 language of the contract.

11 Among them, Your Honor, is is that the
12 contract requires written notice in only one
13 circumstance, and that written notice is not a written
14 notice of termination. It's not a written notice that
15 you have ten days to cure. It is written notice of
16 his failure to perform his assigned duties.

17 Mr. Beyer testified that the board is the
18 one that assigned him all of these duties of being the
19 sales leader, the sales executive, the senior
20 vice-president of sales.

21 And starting particularly with that
22 August 1 email, Mr. Bold is telling Mr. Beyer exactly
23 what the board's concerns are with regard to his lack
24 of new sales, his job responsibility assigned by the
25 board, when he first started.

1 That's the written notice, Your Honor.
2 Doesn't say we then have to terminate him immediately
3 after the ten days have gone by. We have to give
4 him -- it doesn't even say we have to give him notice
5 of the ten days. It says you failed to cure within
6 ten days. If he doesn't cure within ten days, we can
7 terminate him.

8 In this case he repeated that failure of
9 providing the board with the information that they
10 needed to make decisions in September, as shown by the
11 emails between Mr. Bold and Mr. Beyer where they had
12 to redo the slides to provide the accurate information
13 to the board.

14 So we think that that written notice for
15 that particular cause condition, which is a failure to
16 perform assigned duties, exists.

17 THE COURT: I think you have a real
18 stretch to convince me that Mr. Bold is speaking as
19 the board in these emails. He is the CEO. He also
20 answers to the board. He may be on the board, but he
21 also answers to the board.

22 He is trying to get one of his
23 subordinates to make him look good, among other
24 things, but just because he's on the board, I think
25 it's a very -- a real stretch to say that he is

1 speaking for the board in these emails.

2 MR. RUTCHOW: Well, Your Honor, I would
3 agree with that, except that the subject matter of
4 these emails is the board's request for information.

5 THE COURT: Well, but one -- one thing --
6 and I didn't follow up on it, but at sort of the end
7 of this string of emails, Mr. Bold said that this was
8 leading up to a meeting with investors.

9 MR. RUTCHOW: One of the meetings.

10 THE COURT: Said this was a meeting with
11 investors.

12 MR. RUTCHOW: One of the meetings. The
13 meeting later -- if you read the emails, the August 1
14 email and the August 3 email are talking about the
15 board meeting the next week. The August 17 and 21
16 emails are talking about a different meeting.

17 But the August 1 and August 3 emails,
18 which are to me the key emails because they're the two
19 that say, you know, this is the information that they
20 are requesting. It's obvious that they're getting
21 ready for the board meeting. Mr. Bold testified they
22 were getting ready for the August board meeting.

23 THE COURT: But the email doesn't make it
24 clear that it's board members that are seeking this
25 information. Investors are going to be seeking

1 information as well; correct?

2 MR. RUTCHOW: Your Honor, I think it's
3 clear from the context of the emails that this was an
4 email that was requesting -- that they -- that the
5 information that was being requested was to put
6 together to provide -- Mr. Bold testified that it was
7 for a board meeting the next week.

8 And that there was a pattern of having --
9 making these requests for this information about a
10 week before the board meetings. Mr. Beyer and
11 Mr. Bold both knew when the board meetings were. It
12 would be in the context of where they worked and the
13 context of the pattern that they had established that
14 Mr. Beyer -- or Mr. Bold testified to, that that
15 context showed that that's clearly information he's
16 requesting for the board.

17 THE COURT: Okay.

18 MR. RUTCHOW: In fact, I think even one
19 of the emails talks about board slides, so from that
20 perspective...

21 Your Honor, the other two I wanted to
22 concentrate on are the willful misconduct and the
23 violation of company policies. The employee handbook
24 that Mr. Beyer signed the acknowledgment for has two
25 particularly relevant provisions. In Section 2.13 of

1 the employee handbook there is a prohibition on
2 threatening, harassing or coercing employees. And
3 then in Section 5.1 there's a provision prohibiting
4 sending threatening emails.

5 Your Honor, Mr. Bold testified about
6 numerous times that Mr. Beyer belittled, harassed,
7 threatened the people that he worked with. Both
8 Mr. Beyer and Mr. Bold, in some of the emails that we
9 provided, provided specific examples of when that
10 occurred.

11 THE COURT: Now, tell me what -- you
12 introduced a lot of hearsay as state of mind. But to
13 establish willful misconduct as a for cause grounds
14 for termination, you have to establish willful
15 misconduct, not just that he thought that there was
16 willful misconduct and that that willful misconduct is
17 based on hearsay. It's based on other employees
18 telling me. There is one -- the one email about the
19 mental health --

20 MR. RUTCHOW: There are two -- there are
21 two --

22 THE COURT: Let me -- let me finish.

23 MR. RUTCHOW: I apologize, Your Honor.

24 THE COURT: Let me finish.

25 But other employees telling him that they

1 were belittled and all that sort of thing, that is
2 definitely hearsay. And it contributed to his
3 decision, but it cannot form the basis for this Court
4 to rule that that misconduct was established. You
5 didn't have any firsthand evidence of that, other than
6 one email I remember, you may be telling me about
7 another email.

8 MR. RUTCHOW: Your Honor, there were at
9 least two emails that we introduced. One was the
10 email that he sent to the founder of the company that
11 the founder of the company took as a threat. We
12 actually introduced that email.

13 The other email was the one that you're
14 talking about, the one from late June that he sent to
15 Mr. Lessem about his emotional state. And in
16 particular, Mr. Beyer -- Mr. Bold having, you know,
17 reprimanded Mr. Bold -- excuse me, Mr. Beyer for that
18 conduct.

19 I think the context of those emails show
20 that that was willful misconduct. On top of that,
21 Your Honor, as I said, it also would be clear
22 violations of the company policy.

23 THE COURT: Let me -- let me unpack this
24 a little bit.

25 MR. RUTCHOW: Sure.

1 THE COURT: What is the direct evidence
2 that is nonhearsay that Mr. Favret took that as a
3 threat?

4 MR. RUTCHOW: There's no direct evidence
5 that he took -- well, yes -- well, Your Honor,
6 Mr. Beyer admitted on the stand that Mr. Favret
7 considered it a threat. Mr. Beyer testified to that.

8 THE COURT: Okay.

9 MR. RUTCHOW: That he -- that he
10 considered it a threat. And that came in without any
11 hearsay objection, Your Honor.

12 And then, Your Honor, again -- and this
13 goes back to -- this goes back to my analogy to the
14 sexual harassment cases. In terms of -- Mr. Bold can
15 rely on hearsay evidence to make a decision, a
16 reasonable good-faith belief that conduct has violated
17 a company policy.

18 And if he's made a decision that it
19 violates company policy, then he can make a -- he can
20 take action based on that. And so it's not so much
21 whether or not the underlying conduct occurred, but if
22 he had a reasonable good faith belief that a company
23 policy was violated, he can take action based on it.
24 In this case he can determine that that's a cause
25 reason for termination.

1 THE COURT: I don't think you can
2 analogize a sexual harassment case to a breach of
3 contract case. You must establish that he was
4 terminated for cause --

5 MR. RUTCHOW: Correct.

6 THE COURT: -- under this contract
7 provision. Whether he thought he was right or not, it
8 doesn't matter. If he wasn't right, then he -- then
9 Mr. Beyer was not lawfully terminated for cause.

10 He may have thought there was a violation
11 of a policy, but for you not to have breached the
12 contract, you have to establish to my satisfaction
13 that there was a breach of the policy. Am I being too
14 obscure here?

15 MR. RUTCHOW: No, I don't think so.

16 THE COURT: Or am I wrong?

17 MR. RUTCHOW: No, I don't think -- I
18 don't think you're --

19 THE COURT: I don't think intent the way
20 you're using it for sexual harassment purposes -- I
21 mean, the analogy of a sexual harassment case, I just
22 don't think it's the proper analogy.

23 MR. RUTCHOW: I guess -- my analogy --
24 Your Honor, my analogy is that to -- for the company
25 to establish a violation of a company policy, they can

1 rely on hearsay to make that determination, that he's
2 violated company policy. And I guess that -- that's
3 the argument I'm making, Your Honor, with regard to
4 that, is the decision is the company's to make as to
5 whether or not -- it's the company's decision that you
6 have violated company policy; and, therefore, we have
7 cause to terminate you.

8 The company makes that determination.
9 And it doesn't say, and we have to prove it to a
10 particular standard to be able to have cause to
11 determine that in our -- in our view you have violated
12 company policy.

13 So the -- the discretion to decide
14 whether or not it is a violation of company policy is
15 the company's discretion, I believe, the way that this
16 language is written.

17 In any event, Your Honor, there's clear
18 nonhearsay testimony threatening -- sending
19 threatening emails, sending harassing emails, sending
20 emails that damage the reputation of the company,
21 which, again, is a violation of company policy. It's
22 not just to the employees.

23 We've got the clear evidence of the email
24 to the customer that Mr. Beyer ultimately had to
25 apologize for. Even Mr. Beyer admits that he should

1 not have sent that email. He doesn't think he should
2 have used that tone, but in either case, it was an
3 inappropriate email. And the policy about sending --
4 of sending emails that could damage the company is not
5 limited to just sending an email internally to another
6 employee.

7 So you've got the email to Ben Favret.
8 You've got the email to Sharon Holmes. You've got the
9 email to Marc Lessem. You've also got the testimony
10 that Mr. Beyer made the comments about Mr. Deutscher
11 regarding being senile and dementia and he's too old
12 and so he wants to terminate him for that.

13 That Mr. Bold testified to -- again, not
14 hearsay because it was an admission of a party
15 opponent, he was saying what Mr. Beyer said directly
16 to him.

17 THE COURT: Where is the -- where does
18 the email to the hospital employee in Dallas who was
19 just basically insulted because she thought it had
20 been condescending --

21 MR. RUTCHOW: I think that's --

22 THE COURT: -- where does that fit?
23 Which for cause does that fit?

24 MR. RUTCHOW: That would be a violation
25 of company policy, Your Honor.

1 THE COURT: And what company policy?
2 We're not talking about belittling employees. We're
3 talking about relationships with -- give me the
4 exact -- give me chapter and verse.

5 MR. RUTCHOW: Let me get that specific
6 one, Your Honor. The specific one here that we would
7 say -- and I'm not sure it would be considered a
8 threatening message, but there is policy 5.10 that
9 prohibits sending a threatening messages, sending
10 message that could damage the image or reputation of
11 Vestagen.

12 And clearly having a prospective customer
13 feel insulted and condescended to could result in the
14 damage to the image or reputation of Vestagen. So
15 that would be --

16 THE COURT: Read it to me. 5.13 -- or
17 10.

18 MR. RUTCHOW: It's 5.10 -- and it's a
19 fairly long policy, but about halfway through there's
20 a prohibition -- this is the email policy.

21 THE COURT: Okay.

22 MR. RUTCHOW: And there is a prohibition
23 on sending messages that could damage the image or
24 reputation of Vestagen. There's another one about
25 prohibiting the sending of threatening messages, but

1 given what message that was sent, I think that one
2 would apply more to the messages that he sent
3 internally to employees than necessarily the insulting
4 email that he sent.

5 THE COURT: Okay.

6 MR. RUTCHOW: Your Honor, and although
7 Mr. Zenner talked a great deal about it, there's
8 nothing in the contract that requires that we give him
9 notice that he has ten days to cure. The contract
10 says you failed to cure in ten days.

11 It doesn't say we've got to give you
12 notice of those ten days or we've got to give you
13 notice of ten days that you haven't cured. It also
14 doesn't require that we make the decision to terminate
15 and then give him ten days.

16 We have to give him notice that
17 conditions exist. If he has failed to do something,
18 if he's engaged in willful conduct. And Mr. Bold has
19 testified that he gave notice of the underlying
20 conditions.

21 I don't think that you can read the
22 language of the contract to say that magic words of
23 termination for cause or magic words of ten days to
24 cure are required, particularly with regard to the
25 oral notice that is allowed for all but the board

1 written notice provision.

2 So for those reasons, Your Honor, we
3 think that the company did have appropriate grounds to
4 terminate him for cause and, therefore, not pay him
5 the six months' severance.

6 THE COURT: Thank you.

7 Any rebuttal, Mr. Zenner?

8 MR. ZENNER: Yes. With respect to that
9 6-30 email that he was just talking about that
10 violated the company policy because it damages the
11 reputation of the company, I'm sure Your Honor has
12 already, but just read the email. And draw your own
13 conclusion whether or not that email damaged the
14 company's reputation. It may have been taken wrong by
15 a customer, but it certainly wasn't intended that way.
16 And he apologized.

17 THE COURT: Okay. All right, folks. I
18 will issue an opinion shortly. Hopefully shortly.

19 MR. RUTCHOW: Thank you, Your Honor.

20 THE COURT: I'll try shortly, how about
21 that.

22 MR. ZENNER: Thank you, Your Honor.

23 THE COURT: Okay. We're in recess.
24
25

1 (Which were all of the proceedings had in
2 the above-captioned cause on the above-captioned
3 date.)

REPORTER'S CERTIFICATE PAGE

I, Roxann Harkins, Official Court Reporter
for the United States District Court for the Middle
District of Tennessee, in Nashville, do hereby
certify:

That I reported on the stenographic machine
the proceedings held in open court on November 28,
2017, in the matter of BEYER v. VESTAGEN, Case No.
3:16-cv-02736; that said proceedings were reduced to
typewritten form by me; and that the foregoing
transcript is a true and accurate transcript of said
proceedings.

This is the 12th day of February, 2018.

s/ Roxann Harkins_____
ROXANN HARKINS, RPR, CRR
Official Court Reporter